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Leslie J. Scott
Inner Temple

[Abbott, Charles,
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A TREATISE OF THE LAW

RELATIVE TO

Merchant Ships and Seamen:

IN FOUR PARTS;

I. OF THE OWNERS OF MERCHANT SHIPS;
II. OF THE PERSONS EMPLOYED IN THE NAVIGATION THEREOF;
III. OF THE CARRIAGE OF GOODS THEREIN;
IV. OF THE WAGES OF MERCHANT SEAMEN.

THE FIFTH EDITION,

EDITED, WITH PERMISSION OF THE AUTHOR,

BY JOHN HENRY ABBOTT,

OF THE INNER TEMPLE, BARRISTER AT LAW.

WITH ADDITIONS, AND WITH COPIES OF THE

REGISTRY, NAVIGATION, AND PILOT ACTS,

AND THE ACTS RELATING TO SALVAGE AND SEAMENS' WAGES, ETC.

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TO

THE RIGHT HONORABLE

JOHN EARL OF ELDON,

LORD HIGH CHANCELLOR OF GREAT BRITAIN,

&c. &c. &c.

My Lord,

The original Author having, with Your permission, dedicated the following Treatise to Your Lordship; the Editor of this edition hopes he shall not be deemed presumptuous in presenting to Your Lordship the work in its present form; and begs at the same time to express his most sincere acknowledgments for favours received

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from Your kindness, and to subscribe himself, with the greatest gratitude and respect,

My Lord,

Your Lordship's

Most obliged,

And most obedient Servant,

JOHN HENRY ABBOTT.

Russell Square,
14th November 1826.

ADVERTISEMENT

TO THIS EDITION.

THE decisions of English Courts, reported since the publication of the last edition of this Treatise, on the subjects mentioned in it, exceed two hundred. Several important Acts of the Legislature have also passed; a Consolidation and amendment of the Statutes relating to the Registry of Ships and to Pilotage, additions to the statutes on Salvage, and a new Navigation Act. The book itself has been for some time out of print. For these reasons it has been thought that a New Edition containing references to so much new matter, even if imperfectly made, would be acceptable to the Profession, and the present Editor hopes they will be considered a sufficient excuse for this publication.

It is perhaps scarcely necessary to observe that this Edition has been undertaken with the permission of the original Author of the Treatise, but it seems proper to mention to the unprofessional reader, that he must not be induced to attribute any judicial authority to the remarks that are occasionally made on various

various topics, on account either of the present high official station of the Author, or of the Editor's very near relationship to him.

In order to prevent an increase in the size of the volume, the present Edition has been printed more closely than any of the preceding.

PREFACE

TO THE FIRST EDITION.

CONSIDERING the great importance of every branch of law relating to Maritime Commerce, it is a matter of surprise that no treatise on the subjects discussed in the following sheets should have been written by any member of the profession of the law for a very long period of years. It is now more than a century since the first publication of the work of *Molloy*, the only *English Lawyer*, who has written on these matters. During that period the law of the country has grown up with its commerce; many interesting points have been argued by able and eloquent Advocates, and decided by learned and enlightened Judges; and some very important regulations have been introduced by the Legislature: but very little of useful addition has been made to the collection of *Molloy*, either by the subsequent editors of his treatise, or by the other authors, who have written on the same topics. Yet the absence of a general and established code of Maritime Law, which almost every other European nation possesses, seems to render a collection of the principal points of that law peculiarly necessary both for English merchants and English lawyers. On the subject of Insurance, this has been already effected. In the present Treatise an attempt is made to supply the defect in some other branches. And in order to render the work as generally

rally useful as the nature of it will allow, great care has been taken to avoid the use of technical phrases, wherever the form and manner of legal proceedings are not the principal points of consideration. The reader, who is of the profession of the law, may, I fear, sometimes be disgusted at this; and at other times censure the awkward expressions substituted for the language, to which his ear is familiar. The only excuse, that can be offered for the latter fault, is the difficulty of expressing ideas, to which the mind is habituated, in any other words, than those to which we are accustomed: a difficulty, of which the conversation of all persons, who are engaged in any art or science, furnishes daily experience.

The treatise now offered to the Public is compiled not only from the text writers of our own Nation, and the reporters of the decisions of our own Courts, but also from the books of the Civil Law, and from such of the maritime laws of foreign nations, and the works of foreign writers, as I have been able to obtain a knowledge of. A few decisions of the House of Lords are quoted from the printed statements delivered by the contending parties and the Journals of the House. Some judgments pronounced by English Judges are also introduced, which have not hitherto been made public; for the most valuable part of these I am indebted to Mr. *Justice Lawrence*, and particularly for the cases of *Parish* and *Crawford*, *Appleby* and *Pollock*, and *Day* and *Searle*; the case of *Mackrell* against *Simond* and *Hankey* was communicated to me by the late Mr. *Justice Buller*, who, when at the bar, argued it on behalf of the defendants; the rest are cited from notes taken by myself

or

or my professional friends. Indeed I am indebted to my friends not only for assistance of this kind, but also for the loan of scarce books, the correction of some errors, and the suggestion of many valuable hints for the improvement of the work. Of the assistance thus afforded me I shall ever entertain the most grateful remembrance, and my reader will experience the advantage in many parts of this book.

The Ordinances most frequently quoted are those of Oleron and Wisbuy, the two Ordinances of the *Hanse-Towns*, and the Ordonnance de la Marine du Mois d'Aoust 1681. The Ordinances of Oleron and Wisbuy and the first Hanseatic Ordinance are in the hands of every lawyer: and whenever the Hanseatic Ordinance is mentioned generally, the reader will understand this to be spoken of. The Hanseatic Ordinance of the year 1614 was published with a Latin translation and commentary by *Kuricke* in a small quarto at Hamburgh in the year 1677. This book is very scarce in this country: the Ordinance itself is arranged and divided, and contains some additional regulations; which however are little more than a detail of the principles comprised in the first Ordinance. Reference is also occasionally made to such other foreign Ordinances as are to be found in the second volume of *Magens*'s Essay on Insurances. I have often lamented my inability to consult the earliest maritime code of modern Europe, the Consolato del Mare. There is an old French translation of this body of laws, but I could never meet with it, and I am ignorant of the Spanish and Italian languages. Whenever therefore I have referred to this code, the reference is taken from the work of some other author: and it is

made

made for the purpose of giving an opportunity of consulting the original to those, whose superior attainments enable them to do so. The Ordinance of Louis the Fourteenth is quoted from the edition published with a most learned and valuable commentary by *Valin* in two volumes quarto at Rochelle in the year 1766, and is cited by the name of the French Ordinance. An English translation of the whole of this Ordinance is contained in a book called, " A general Treatise of " the Dominion of the Sea, and a complete Body of " Sea Laws," published in quarto in the early part of the last century. The translation is divided into sections, and not like the French of *Valin* into books and titles; but the subjects and articles of the sections in the English are the same as those of the titles in the French; and as the latter are always cited in the notes to this treatise, recourse may be had to the English translation with very little difficulty. If the reader should be offended at the frequent references to this Ordinance, I must request him to recollect that those references are made to the maritime code of a great commercial nation, which has attributed much of its national prosperity to that code: a code composed in the reign of a politic Prince; under the auspices of a wise and enlightened Minister; by laborious and learned persons, who selected the most valuable principles of all the maritime laws then existing; and which in matter, method, and style, is one of the most finished acts of legislation, that ever was promulgated*. The

* The esteem, in which this Ordinance has been held in France, is abundantly shewn by the little alteration that is made in the Code de Commerce, of the year 1807.

The writings of some foreign authors are also occasionally cited; particularly the Notabilia of *Roccus*, and the treatises of *Pothier* and *Emerigon*. The Notabilia of *Roccus* are an abstract of the most useful points contained in the works of earlier authors, and in the Digest and Code of *Justinian*. Where this author is cited generally the reference is to the Notabilia de Navibus et Naulo. The treatises of *Pothier* are remarkable for the accuracy of the principles contained in them, the perspicuity of their arrangement, and the elegance of their style. The treatise of *Emerigon* is peculiarly valuable for its extent of learned research, and the numerous and apt citations of the texts of the Civil Law and of the Marine Ordinances, the opinions of former writers, and the adjudications of the Courts of Justice of his own country, which are to be found in every part of it.

It should be observed, however, not only of all these treatises, but also of the Civil Law, and the Ordinances, without excepting even the Ordinance of Oleron (which being considered as the edict of an English Prince, has been received with peculiar attention in the Court of Admiralty), that they have not the binding force or authority of law in this country; and that they are here quoted, sometimes to illustrate principles generally admitted and received; sometimes to shew the opinion of learned persons, and the rule adopted in maritime nations upon points not hitherto settled by the authority of our own law; and at other times to furnish information, that may be useful in our commercial intercourse with foreign states.

In the composition of this treatise my object has been rather to arrange and illustrate principles, than to

to collect the decisions of Courts or the Acts of the Legislature. The cases therefore are, with a few exceptions, stated in a concise manner; and the clauses of Acts of Parliament are abridged, whenever an abridgment seemed likely to be as satisfactory to the reader as a transcript. Of the institutions of written law the precise words are often necessary to a right understanding of the intention of the lawgiver. I should have saved myself much both of time and labor, if I had copied more and abridged less.

There are few reported decisions of our Courts of Justice, from which some useful principle may not be extracted; and I have therefore searched the books of reports with much assiduity. Nevertheless I am apprehensive that some valuable cases may have escaped my attention; and I shall feel myself greatly indebted to any one, who will point out to me such omissions of this kind, as may fall under his notice, or acquaint me with any other defects or errors that he may observe.

Relying on the kindness of those who may peruse the book with a friendly disposition to its author, and the candor of those who may look into it for the sake of information alone, I now offer it to the Public, and to the Profession of which I am a member, with a sincere desire that it may be found useful to both.

C. ABBOTT.

Inner Temple,
Jan. 25th, 1802.

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PART THE FIRST.

CHAPTER THE FIRST.

OF THE OWNERS OF SHIPS IN GENERAL.

1. ONE or more persons may acquire the property of a Ship by building it at their expense, or by purchasing it of another, who has authority to dispose of it.

CORRIGENDA.

Page 161, note *(z) for* sect. 86, *substitute* sect. 76.

Page 250, note *(d) for* 45 Geo. 3. c. 10. s. 3. 6. *substitute* 4 Geo. 4. c. 78.

self has neither property in them, nor authority to dispose of them, the same cannot take place with respect to ships, as there is no open market for the sale of them. Indeed this species of property appears from very early times to have been evidenced by written documents, and at present always is so, which other moveable goods rarely are; and therefore the buyer has in this instance the means of ascertaining the title of any person, who offers to sell, and can seldom be deceived, except by his own fault.

2. The Master of a ship possesses, as more fully appears in different parts of this Treatise, every power necessary for

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1. ONE or more persons may acquire the property of a Ship by building it at their expense, or by purchasing it of another, who has authority to dispose of it. Upon the death of the Owner, his interest devolves upon his executors or administrators, his personal representatives. In the case of purchase, however, it is necessary that the person who, takes upon him to sell, should have power to do so; for although a sale of other goods by the person, who is in possession of them, does in many cases vest the property in the buyer, even when the seller himself has neither property in them, nor authority to dispose of them, the same cannot take place with respect to ships, as there is no open market for the sale of them. Indeed this species of property appears from very early times to have been evidenced by written documents, and at present always is so, which other moveable goods rarely are; and therefore the buyer has in this instance the means of ascertaining the title of any person, who offers to sell, and can seldom be deceived, except by his own fault.

2. The Master of a ship possesses, as more fully appears in different parts of this Treatise, every power necessary for

the employment and navigation of the ship; but he has not, unless in a case of extreme necessity, authority to sell the ship, and he is bound seriously and deliberately to try every other expedient to raise money, before disposing of the ship or any part of the cargo *(a)*. And with a view probably to prevent the opportunity of fraud, which the allowance of this power to him might afford, several of the foreign *(b)* ordinances expressly declare, that he shall not sell the ship without a special authority for that purpose from the owners; at the same time, however, authorizing him, in case of necessity, to borrow money upon the credit of the ship or its furniture, with the assent of his crew. And in conformity to these regulations, Sir *Matthew Hale*, when Chief Baron of the Exchequer, is reported to have decided upon a *(c)* case referred to, and argued before him, that the sale of a ship by the master did not convey the property to the buyer, although the sale was made in a foreign country, in a case of inevitable danger, the ship and tackle being beaten and broken, and no hope of saving any part of them, partly on account of the tempest, and partly on account of the barbarity of the inhabitants of the country, who carried off every thing that was cast on shore. Perhaps, however, there might in this case be some circumstances, not noticed by the reporter, which might lead the learned Judge to doubt the absolute necessity of a sale, or to think the buyer a party to the misconduct mentioned in the book. In a case that came before the Court of King's Bench on the subject of hypothecation, Lord *Holt* is reported to have said, "The master has no authority to "sell any part of the ship, and his sale transfers no pro-"perty; but he may hypothecate *(d)*." And in a subsequent

(a) *Underwood* v. *Robertson*, 4 Campbell, 138.

(b) *Consolato*, D. M. ch. 253. Laws of *Oleron*, art 1.; of *Wisbuy*, art. 13.; of the *Hanse Towns*, art. 57. *French* Ordinance, Liv. 2. Tit. 1. *Du Capitaine*, art. 19. Ordin. of *Rotterdam*, art. 165. 2 Magens, 107.

(c) *Tremenhere* v. *Tresillian*, 1 Sid. 452.

(d) *Johnson* v. *Shippen*, 2 Lord Ray, 984.

quent case *(e)*, wherein Lord Chancellor *Cowper* decreed that the *East India Company* should pay to the owner of a ship purchased of the master at *Batavia* for their use by one of their agents, the difference between the real value and the sum paid to the master, with interest thereupon at the rate alowed in *India* (which decree was afterwards affirmed by the House of Lords,) his Lordship took notice *that the sale of the ship was not necessary:* The transaction indeed was a gross fraud between the master and the agent of the Company, but without their privity. By the Consolato del Mare, the master is allowed to sell the ship, if worn out by age *(f)*. And it is said by one of the earliest English reporters, that "the master of a ship may in "some cases sell the ship, although it does not belong to "him, as in the case of famine *(g)*, &c." This author does not cite the decision of any Court as an authority for the observation. The exception, however, of cases of extreme necessity rather fortifies than weakens the general rule; and no person can safely purchase a ship of the master in any case, which does not clearly fall within the principle, upon which the exception is founded; and such a case will rarely happen. And although the master be himself a part-owner of the ship, yet will not his sale thereof be good for more than his own part; for the interest of part-owners is so far distinct, that one of them cannot dispose of the share of another; whereas in articles of ordinary sale, one partner may in general transfer the whole property, if the transaction be without fraud.

Since the publication of the first edition of this book, this power of the master has been a subject of judicial consideration in several Courts. The *British* ship *Glamorgan*, belonging to the port of *London*, was sent on a voyage from thence to *Antigua* and back; she delivered her cargo at *Antigua*, took in her homeward cargo, and sailed

(e) Ekins v. *E. I. Company*, 1 P. Williams, 395. 2 Bro. Parl. Cases, 72.

(f) Cap. 253.

(g) Jenkin's Centuries, p. 165. Observation at the end of case 17.

sailed to *Tortola* to join convoy; and arriving at *Tortola* in a leaky state, on the 16 Nov. 1805, was there sold in the following month, under an order of the Vice-Admiralty Court obtained on the application of the master for a survey, and a report of surveyors that the ship was totally unfit in her then state to proceed with her cargo, and that the expense of repairing her there would be more than her value when repaired. The purchaser procured a new register for the ship at *Tortola*, and sent her from thence to *Nevis*, and there procured another new register, and sent her from thence to *Grenada*, where she took in a cargo, with which she arrived safely in *London* in *July* 1806. No fraud was found to exist in this sale, and the Court being of opinion that the sale could not be sustained under the authority of the Vice-Admiralty Court, it became material to consider whether it could be sustained as a sale by the authority of the master. The Court appear to have thought that it could not; but the point was not judicially decided, because the learned Judges were of opinion that, supposing the master was warranted by an authority, express or implied, from his owner, to sell the ship in such a case, still it was necessary that the forms prescribed by the Register Acts should be complied with: and nothing of this sort having been done, the original owner succeeded in his action against the purchaser *(h)*.

The *American* ship *Fanny & Elmira (i)* having been taken by the *Danes*, and recaptured by a *British* sloop, was claimed in the Prize Court of Admiralty on behalf of her original owners, who resided at *New York*, and also by a Mr. *Ormsby*, who had purchased her of the master at *Sligo* in *Ireland*, under the following circumstances. The ship having been damaged upon the rocks in *Sligo Bay*, the master caused her to be surveyed by persons whom

(h) Reid v. *Darby*, 10 East, 143. See also, as to the authority of the Vice-Admiralty Court, to order a sale on the application of the master, *Hunter* v. *Prinsep & others*, 10 East, 378.

(i) The FANNY and ELMIRA, *Hicks*. Edwards Ad. Rep. 117.

whom he described as competent, but who do not appear to have filled any public station, and who reported that it would require £. 1,500 to repair the vessel, a sum far exceeding her value, and that it would be for the interest of the concerned to have her sold. She was accordingly sold by public auction, and bought by *Ormsby* for £. 350, who by the master's desire paid part of the money into the hands of the agents of the owner at *Sligo*, and carried the remainder to account between himself and the master. Soon after this purchase, *Ormsby* offered a fourth of the vessel to the master at the same price, provided he would consent to navigate her again as master; this he agreed to; the vessel was repaired at an expense of £. 800, sailed to *Riga*, and was taken on her return from thence to *London*. The agents of the original owners declared they had done every thing in their power to prevent the sale, and had been ready to make any advances that might be found necessary. The learned Judge of the Court ordered the ship to be restored to the original owners, without prejudice to any rights which the proper Court of Justice in *America* might think Mr. *Ormsby* had acquired by the purchase. It is obvious, from the facts above stated, that this sale could not be justified on the ground of necessity. But the opinion of so very learned and enlightened a Judge on this subject in general, deserves the greatest attention, and ought to be made known as generally as possible, to prevent sales of this kind, which are so often injurious to the rights of the owners. " In the first place," he says, " it must " be shewn that there was a necessity, and then it re- " mains to be considered whether it was such as by " law would give the master a right to sell. That " such a case may arise, I am not prepared to deny; " suppose, for instance, a ship in a foreign country, " where there is no correspondent of the owners, and " no money to be had on hypothecation to put her " into repair. Under these circumstances, what is to be

" done? the ship may rot before the master can hear " from his owners; and therefore, if the necessity were " clearly shewn, with full proof that every thing was " done *optima fide*, and for the real benefit of the owners, " the Court might be disposed to sustain a purchase so " made." And again, " In a case of that description, I " say, strongly put, where there was no ground for sus- " picion, although I do not know that such a power is " given to the master by the general Maritime Law, yet, " feeling its expediency, this Court would strain hard to " support the title of the purchaser: but there must be " the clearest proof of the necessity: it must be shewn " not only that the vessel was in want of repair, but " likewise that it was impossible to procure the money " for that purpose."

Again, in an action brought on a policy of insurance on the ship *Lady Banks*, which had been sold by the master at the *Isle of France*, the jury having, in answer to the questions submitted to their consideration by the learned Judge at the trial, found, first, that the master appeared to have acted according to the best of his judgment; secondly, that the sale was conducted fairly and honestly; and thirdly, that there was *no* necessity for the sale of the ship; the verdict was entered for the assured for an average loss only, and not for a total loss with benefit of salvage, which the assured had claimed *(k)*.

It may be proper to mention in this place a case tried very soon after that which I have last cited, arising out of a sale of a part of the cargo made at the *Cape of Good Hope* by the master of a ship which had been wrecked there. The authority of the master to sell the cargo depends upon

(k) Macburn v. *Leckie*, tried before Lord Chief Justice Dallas, March 5th, 1822. A printed report of this trial has been published, by order of the committee for managing the affairs of Lloyd's. The owners of part of the goods, shipped on board the *Lady Banks*, afterwards recovered from the plaintiffs in this cause, in an action for breach of duty, for not delivering at their place of destination. 1st Bingham, 243.

upon the same principles as his authority to sell the ship. The goods in question were forty-two chests of indigo which the purchasers sent to *England*, and which were found upon arrival here to be damaged. Several other chests which were on board were also saved and sold. The catalogue for sale described several of the packages of the indigo as being wet, otherwise in good order, the chests were not opened before the sale. The master, acting under the advice given him at the *Cape*, thought a sale the best thing that could be done for all concerned, and no fraud or improper motive was imputed to him. The action was brought by the owner of the forty-two chests, nominally against the *East India Company*, virtually against the persons who had become the purchasers at the *Cape* The sale of these goods under these circumstances being thought *unnecessary*, the plaintiffs obtained a verdict. A motion for a new trial was made in the ensuing term, but no rule granted *(l)*.

The decision of these two cases is conformable to the opinion of the Court of King's Bench, in the case of the *Royal Exchange Assurance Company* v. *Idle*, which was a writ of error brought on a judgment of the Court of Common Pleas. The Court of King's Bench not being satisfied that the necessity of the sale of the ship was made apparent by the facts found on the special verdict, directed a *venire de novo* to ascertain that point *(m)*.

By these decisions, the authority of the case of *Read* v. *Bonham (n)* appears to be much weakened, unless the facts of that case are considered as shewing a necessity for the sale of the ship, upon which point there was a difference

(l) Freeman v. *East India Company*, tried before Lord Chief Justice Abbott, April 17th, 1822. A printed account of this trial also was published with *Mæburn* v. *Leckie*. The motion for a new trial is reported in 5 Barnewall & Alderson, 617.

(m) 8 Taunton, 755. 3 B. Moore, 115. 3 Broderick & Bingham, 151, in note.

(n) 3 Broderick & Bingham, 157. This also was an action on a policy of Insurance.

difference of opinion on the Bench, and therefore it seems useless to detail them in this place.

In a more recent case of *Robertson* v. *Clark*, in which the Court of Common Pleas considered that the sale of the ship was justified, the Court held, that satisfactory proof was given of a sale *bonâ fide*, and for the benefit of all concerned, and of a case of urgent necessity *(o)*.

3. In foreign countries, attempts have been made to evade the effect of these restrictions, by procuring a sentence of condemnation and sale of a ship, as unfit for service, from some Court or Judge having jurisdiction in maritime affairs *(p)*. No such jurisdiction is known to the law of England. The condemnations, as they are called, sometimes made abroad, upon the survey and report of captains or carpenters, have no binding force in this country, but the fact, upon which they profess to be founded, may be again litigated by the parties interested in disputing it. This was successfully done at a trial before the late Lord *Ellenborough*, in a case *(q)* of which it will be proper to detail the circumstances, as there is too much reason to fear that similar practices not unfrequently take place. The owners of the ship *Grace* sent her to *Jamaica*, under the command of one *Cook*, with a cargo consigned principally to *M'Anuff* and *Cunningham*, and with orders to follow their directions in respect to his loading back, and to apply to them for money for the use of the ship. On the 23d of *February* 1802, after the discharge of her cargo, the ship was driven on shore at *Rio Bueno* in *Jamaica*, in a gale of wind. The master applied to *Cunningham*, who resided at *Montego Bay*, for advice in this emergency, and on the 27th of *February* made the usual protest. On the same day, the deputy naval officer at *Montego Bay* directed his warrant

(o) 1 Bingham, 445.

(p) See *Valin* on the *French* Ordinance, tom. 1. p. 444.

(q) *Hayman & others* v. *Moulton & others*, Sitt. at Guildhall, *Nov.* 1, 1803 There is a report of this case in 5 Espin. N. P. C. p. 65.

warrant to four masters of ships, desiring them to examine the *Grace*, and make a return upon oath of her state and condition. They reported, that they had been on board, and found the ship settled in a sand bank four feet, with a bank of sand between her and the sea of twice her length, and not more than two feet water on the sand bank; and that they were therefore unanimously of opinion, from the great expense that would be incurred in attempting to get her afloat, and the little chance of succeeding therein, that it would be most for the advantage of the underwriters, and all others concerned, to sell the ship as she then lay, with all her materials, to the best bidder. *Cunningham* advertised the ship for sale by auction *as a wreck:* he acted as auctioneer, and charged his commission, and she was sold on the 15th of *March*, to one *Dunn*, for £.1,210 *Jamaica* currency, about £.864 sterling. One of the surveyors attended, and bid at the sale. *Dunn* sold the vessel to *Robert Moulton*, a brother of one of the defendants, who, upon his own oath of ownership, and surrender of her register, obtained a new register at *Jamaica*, and transferred her there to the three defendants, one of whom was one of the four masters by whom she had been surveyed. The vessel was got off the sand with considerable difficulty, but very little injured, and after some slight repairs returned to *England* with a cargo. The deputy naval officer here mentioned, is the deputy of an officer appointed by the governors of our colonies and plantations, to receive an account of ships and their cargoes upon their arrival there *(r)*. The ship had cost £.3,700 before she left *England*, and was little more than three years old.

The owners being dissatisfied with this sale, brought the present action to try its validity; and at the trial it appeared by the evidence of *Cook*, and of three of the masters who had surveyed her, that they had paid very little

(r) 15 *Car.* 2. *c.* 7. *sect.* 8. & 7 & 8 *Wm.* 3. *c.* 22. *sect.* 5.

little attention to the ship itself, which was never pumped before they made their report; but they swore that they thought a sale the most prudent step to be taken, on account of the difficulty, expense, and hazard of removing her from her situation, and the little resources that *Cook* had for such a purpose. The plaintiffs contended, that the master of a ship could not dispose of her in any case; or that, admitting him to have this power in a case of absolute necessity, such necessity did not exist in this instance, and the whole transaction was a gross fraud.

The Chief Justice, Lord *Ellenborough*, offered to reserve the question, of the master's power to sell under *any* circumstances, for the consideration of the Court, if the verdict should render that point material; and stated his own opinion to the Jury to be, that although the master had no general authority to sell, he had an implied authority, in cases of extreme necessity, to act for the benefit of the concern, exercising a sound discretion, such as the owner himself would exercise if he were upon the spot; and that in extreme cases, and extreme cases only, he had power to sell, as in the instance of a wreck which could not be got off, and ought not to be left to perish absolutely. And he desired the Jury to consider, whether in this case there was such a necessity as would have induced the owner himself to sell if he had been present; and, if they thought there was such a necessity, then, whether the sale in this instance was fraudulent. The Jury found a verdict for the plaintiffs.

In the course of the trial no regard was paid to the authority of the deputy naval officer, whose situation certainly gives him no manner of jurisdiction on such a subject. In commenting upon the evidence, the Chief Justice adverted particularly to the circumstance of one of the surveyors having bid at the sale, and another become a purchaser before the ship left the island; and observed, that it might be a useful lesson to teach such persons, that by accepting the office of surveyor, they elected not

not to become purchasers, or to derive any benefit from a sale.

And at a subsequent trial of an action *(s)*, brought to recover the value of a ship, which had been in like manner condemned and sold at *Tobago*, as incapable of repair, and in which also the plaintiff succeeded, his Lordship said, that he considered a proceeding of this sort, not as the sentence of a Court pronounced for the captors of a captured vessel, but rather as the inquisition of a Sheriff, for the purpose of information to those, who under certain circumstances have the power of selling the ship. Such an inquisition is not conclusive upon the party whose property is in question.

In the case of the ship *Grace*, the sale was considered to be fraudulent: but in those of the ship *Glamorgan*, and the ship *Lady Banks*, which have been recently mentioned *(t)*, the sale was thought to have been fair and well intended, and the former was made under an order of the Court of Vice Admiralty of *Antigua*, founded on the proceedings usual on such occasions, viz. a petition of the master to the Court for a survey, a commission of survey, report of surveyors, decree of the Judge adopting the report, petition of the master for a sale, and a commission of sale directed to the Marshal of the Court. Yet in this case also, the Court of King's Bench decided, that the Vice Admiralty Courts abroad, have no authority to decree, upon the mere petition of the master, the sale of a ship reported upon survey to be unseaworthy, and not repairable, so as to carry its cargo to the place of destination, without an expense exceeding the value of the ship when repaired *(u)*.

4. The *(x)* writers on maritime law inform us, that if a ship

(s) *Andrews* v. *Glover*. Sitt. after Trin. T. 46 *Geo.* 3. at Guildhall, before Lord *Ellenborough*, Ch. J.

(t) Ante, page 3. and 6.

(u) *Reid* v. *Darby*, 10 East, 143.

(x) *Roccus*, not. 20. *Straccha de Navibus*, pars. 2. num. 12. *Molloy de Jure, m. & n.* book 2. ch. 1. sect. 8. The latter adds, that if a ship commit

a ship be sold with the tackle, apparel, furniture, and other instruments thereto belonging, the ship's *boat* is not conveyed by these words, and they found their opinion upon the authority of those parts of the Digest, in which it is said that the *boat* is not a part of the ship *(y)*, or of its apparel *(z)*.

5. It has been observed, that the property of a ship is now always evidenced by written documents. And these documents not only furnish the owner with proof of his property, but also enable him to dispose of it, when the ship is at sea, or in a foreign port. When a ship is here in the country of its owner, and a delivery of actual possession is possible, such delivery is necessary to give a perfect title to the buyer, in case of a sale of the whole ship; for although as between buyer and seller the sale may be completed by payment of the price without delivery of possession, yet if the buyer suffer the seller to remain in possession, and act as owner, and the seller in the mean time become bankrupt, the property may be considered as remaining in him to be disposed of for the benefit of his creditors *(a)*; and sometimes also, if an execution issue upon a judgment against the seller, the sale may be deemed fraudulent and void as against the party who has obtained the judgment *(b)*. But in case of a sale, or agreement for sale, of a part only, it has been thought sufficient, if the vendor,

commit piracy, the *boat* is not forfeited; and refers to a case in Roll's Ab. for his authority: and Beawes has followed the words of Molloy. But in the case referred to, the *boat* is not mentioned.

(y) Dig. 21. 2. 44.

(z) Dig. 6. 3. 1.

(a) By virtue of the *Stat.* 6 *Geo.* 4. *c.* 16. *s.* 70. and former Statutes. See *Monkhouse & others* v. *Hay & others*, 2 Brod. and Bingham, 114. *Hay & others* v. *Fairbairn*, 2 Barnewall and Alderson, 193. *Robinson & others* v. *M'Donnell & others*; *case of the ship Warre*, 5 Maule and Selwyn, 228; and *Kirkley* v. *Hodgson*. 1 Barnewall and Cresswell, 588. But if the buyer, having suffered the seller to remain in possession, does after a time take possession of her, and the seller then becomes bankrupt, this will not come within this statute, possession having been taken before the bankruptcy. *Robinson* v. *M'Donnell*; *case of the ship Glory*, 2 Barnewall and Alderson, 134.

(*b*) By the Common Law, and the *Statute* 13 *Eliz.* *c.* 5.

vendor, having delivered the muniments of his title, ceased from the time to act as a part-owner, actual delivery of a part being said to be impossible *(c)*. This, however, should be understood with some limitation: for if a part-owner has the *actual* possession of the ship, it is not impossible for him to deliver the possession: if he has not the actual possession, the possession of the other part-owners may reasonably be considered to be the possession of the vendee after the sale. But when a ship is abroad, a perfect transfer of the property may at the Common Law be made by assignment of the Grand Bill of Sale, and delivery of that and the other documents relating to the ship *(d)*, as the delivery of the key of a warehouse to the buyer of goods contained therein is held to change the property of the goods, according to the rule of the Civil Law *(e)*; such delivery in each case being not merely a symbol, but the mode of enabling the buyer to take actual possession, as soon as circumstances will permit. And the Legislature has recognized this mode of transfer, and introduced particular regulations respecting it, as will be noticed in the following chapter. And to this purpose, in the case of *Batson* be forereferred to, *Dublin* was esteemed a foreign port with respect to a ship belonging to owners resident in *England*, and mortgaged there. In such a case, however, the buyer should not delay to take possession of the ship upon its return to this country.

6. The law of England, which in all its branches favours the transmutation of property made without fraud, as considering such transmutation beneficial to commerce, differs in this particular very materially from the law of *France*; for by the *French* ordinance *(f)*, all ships remain subject to

(*c*) *Addis* v. *Baker, and others*, 1 Anst. 222. See also *Gillespie* v. *Coutts*, Ambler, 652.

(*d*) *Ex parte Matthews*, 2 Ves. 272. and *Atkinson* v. *Maling*, 2 Ter. Rep. in K. B. 462. *Ex parte Batson*, Co. Bank. Laws, *ch.* 8. *s.* 11. 3 Bro. Ch. Ca. 362, and per *Kenyon* Ch. J. *arguendo* in *Gordon* v. *E. I. Comp.* 7 Ter. Rep. in K. B. 234.

(*e*) Dig. 41. 1. 9. 6.

(*f*) Liv. 2. Tit. 10. *Des Navires*, art. 2 & 3.

to the debts of the seller, until they have made one voyage at sea, under the name and at the risk of the new purchaser, unless they have been sold under a decree: and the sale of a ship at sea shall never prejudice the creditors of the seller. And *Valin*, in his commentary on this part of the ordinance, says, that the debts here meant are debts of every description due at the time of the sale: and in another place *(g)* he informs us, that according to the general law of *France*, ships like other moveables cannot be hypothecated; and that in those parts of *France* where the hypethecation of moveables is permitted, the hypothecation continues in force only during the possession of the debtor himself, and does not enable the creditor to follow the property into the hands of a third person. It should be observed, that in the case of hypothecation, according to the strict meaning of that word in the Civil Law *(h)*, the debtor always continues in possession of the thing hypothecated.

7. Another mode of acquiring property in a ship, is by capture from an enemy in time of war, legalized and sanctioned by a sentence of condemnation in a Court of the capturing power, constituted according to the law of nations. In this case, however, if the capture is made by a ship belonging to his Majesty, the prize is formally condemned to the King, and the value distributed among the captors; and if the capture is made by a private ship, in which case the sentence is in form a condemnation to the captors, a sale will always be the most convenient mode of ascertaining the value, both for the purpose of distribution among the captors, and of payment of the *(i)* duties to the King; and the Acts of Parliament which give to prizes the privileges of British ships, presume a sale thereof,

(g) Comment: on the *French Ordinance*, tom. 1. p. 340.

(h) Dig. 13. 7. 9. 2. Proprie pignus dicimus, quod ad creditorem transit; hypothecam, cum non transit, nec possessio ad creditorem.

(i) By 34 *Geo.* 3. c. 70. ships of war, whether public or private, captured and made prize, are exempt from duty.

thereof, and provide regulations accordingly, as will appear in the next chapter.

If a neutral state seize and sell a vessel, there being no sentence of condemnation, the property in the vessel is not changed *(k)*.

8. Capture by *pirates*, who are merely robbers at sea *(l)*, does not divest the property of the owner; and in a very early period of our history, a law was made for the restitution of property so taken, if found within the realm, belonging as well to strangers as Englishmen. But capture by an enemy, in the exercise of war between two nations, does, according to the law of nations, wholly divest the property of the owner, and transfer it to the captor or the sovereign of his state at *some* period *(m)*. The *African* States, having now acquired the character of established governments, and having regular treaties with this country, are not at present considered as pirates. And therefore in the case of a British ship captured by the *Algerines*, and sold under the authority of the Dey of *Algiers*, before the *Spanish* Consul, to a merchant of *Minorca*, who transferred it to a British merchant under the sanction of the Judge of the Vice-Admiralty Court at *Minorca*, the Court of Admiralty here refused to award restitution to the original owner *(n)*.

9. There appears, however, to be no settled and uniform rule established in practice among nations, as to the precise period, at which property is divested by capture. By some writers and in some nations this has been held to take place after a possession of twenty-four hours; by others not until the prize has been carried *infra præsidia (o)*, an expression

(k) *Wilson* v. *Forster*, 6. Taunton, 25 and 1 Marshal, 425.

(l) 27 *Edw.* 3. stat. 2. c. 13. Year book, 2 Rich. 3. 2. Jenkin's Cent. p. 165.

(m) Hale's Treatise in three parts, par. 2. ch. 28. in Hargrave's Law Tracts, p. 246. *Goss* v. *Withers*, 2 Burr. 683. 1 Rob. A. R. 59. Marshall on Insurance, p. 427.

(n) The HELENA, Heslop, 4 Rob. A. R. 3.

(o) March 110.

expression of very doubtful meaning as applied to maritime warfare.

The present very learned Judge of the Court of Admiralty has said, that, in his apprehension, "by the general "practice of the law of nations, a sentence of con- "demnation is at present deemed generally necessary, "and that a neutral purchaser in Europe during war "looks to the legal sentence of condemnation as one of "the title deeds of a ship, if he buys a prize vessel *(p)*." Such a sentence was thought necessary in this country to divest the title of the original owner, and give a valid title to a purchaser under captors, more than a century ago; and a ship taken from an Englishman by a *French* squadron in the year 1691, and sent into *Bergen* in *Norway*, and there sold, coming afterwards into this country, was claimed by the original owner, and decreed to be restored to him by a sentence of the Court of Admiralty, affirmed afterwards upon appeal to the delegates *(q)*. And upon the ground, that a legal sentence of condemnation cannot, according to the law of nations, be pronounced by a consul or minister of the belligerent power, in the country of a neutral power, to which the prize may have been taken; ships have been restored by the judgment of the Court of Admiralty to their original owners, as well upon recapture from the purchaser *(r)*, as upon arrest in a port of this country *(s)*. In one case, the ship, while in the hands of a neutral purchaser, had been taken by the *French*, and carried into a *Spanish* port, and there condemned by the *French* consul as prize, but that condemnation had been reversed on appeal to the superior prize court at *Paris*, and the ship restored to the purchaser. These facts, however, were held not to alter the case, or give validity to

(p) 1 Rob. A. R. 139.

(q) The ship CONSTANT-MARY, 3 Rob. A. R. 97. *note*. *Thermolin* v. *Sands*, Carth. 423.

(r) The FLAD-OYEN, *Martinson*, 1 Rob. A. R. 135.

(s) The KIERLIGHETT, *Spoerewig*, 3 Rob. A. R. 96. And the PROSPEROUS, Dec. 1800. See also *Haverlock* v. *Rockwood*, 8 Ter. Rep. in B. R. 268. Where this principle is adopted.

to the title of the purchaser. According to the principle upon which these decisions are founded, a ship carried into a neutral port ought not, while remaining there, to be condemned in the country of the captors; but as it appeared in a case *(t)* before the Court of Admiralty, that sentences of condemnation under such circumstances had been sometimes passed in this country, the learned Judge of that Court refused to restore a *British* ship carried into *Norway* by a *Dutch* privateer, and condemned by a Court at the *Hague*. But States in alliance with the captors and at war with the country to which a captured ship belongs, are considered as forming one community with the captors; and a prize carried into such a state may be legally condemned, either there by a consul belonging to the nation of the captors *(u)*, or in the country of the captors *(x)*.

10. The subject of Restitution on recapture will be mentioned in the chapter on Salvage.

11. It seems proper in this place to take notice of what was formerly an important question, and on which persons of eminent talents differed in opinion, *viz.* whether the mortgagee of a ship was to be deemed in law the owner of it, entitled to the benefits, and liable to the burthens, which belong to that character, before he took possession of the ship. It will, however, be sufficient briefly to refer to the cases *(y)* in which decisions have taken place on the subject, as by recent Acts of Parliament *(z)*, when a transfer

(t) The HENRICK & MARIA, *Baar*, 4 Rob. A. R. 43. A short time before this case was argued, the same learned Judge having condemned a *Dutch* ship, but afterwards discovered that although she was described as lying at *Plymouth*, she was in truth in *Norway*, directed the Registrar to annul the decree. Note to the case of the HERSTELDEF, 1 Rob. A. R. 119.

(u) The BETSY, *Kruger*, 2 Rob. A. R. 210, note; and *Oddy* v. *Bovil*, 2 East, 473.

(x) The CHRISTOPHER, *Slyboom*, 2 Rob. A. R. 209.

(y) *Chinnery* v. *Blackburne*, in K. B. East T. 24 *Geo.* 3. reported in a note, 1 Hen. Black. Rep. 117. *Jackson* v. *Vernon*, 1 Hen. Black. 114. *Westerdale* v. *Dale*, 7 Term Rep. in K. B. 306. *Twentyman* v. *Hart*, 1 Starkie, 366. *Annett*, v. *Carstairs and another*, 3 Campbell, 354.

(z) 4 *Geo.* 4. *c.* 41. *s.* 43; 6 *Geo.* 4. *c.* 110. *s.* 45.

a transfer is made only as a security for the payment of debts by way of mortgage, or of assignment to trustees for sale, on a statement being made in the book of registry, and in the indorsement on the certificate of registry to that effect, the person to whom the transfer is made, or any other claiming under him, is *not to be deemed the owner*, nor is the person making such transfer to be deemed to have ceased to be an owner, except so far as may be necessary for the purpose of rendering the ship transferred available, by sale or otherwise, for the payment of those debts, to secure the payment of which the transfer was made.

Still it may be important to consider how far and under what circumstances the legal title and ownership attach to themselves the responsibility of paying for repairs or necessaries ordered by other persons. In the case of *Westerdell* against *Dale*, no question of this sort was raised. Such a question has been since raised in other cases, which should be noticed in this place. The title to a ship may furnish evidence that repairs are made, or stores furnished, under the authority, and upon the credit of the legal owner, as in fact they generally are: but it does no more; and therefore, if it appear that they were made or furnished under the authority and upon the credit of another, the legal owner will not be answerable. Thus, where the purchaser of a ship, in the interval elapsing between the inception and completion of his conveyance, ordered the master to take her to a shipwright to be repaired, which was done accordingly, the seller, although deemed to be the legal owner at the time, was held not to be answerable to the shipwright *(a)*. And, on the other hand, where a ship was sold in the interval between an order for stores, given by the seller, and the delivery of them on board, the purchaser was held not to be responsible

(a) Young and another v. *Brander and another*, 8 East 10.

sponsible for them; although he was responsible for such articles ordered by the master after his purchase *(b)*.

12. It often happens, that the charterer of a ship causes it to be laden either wholly or in part with goods belonging to other persons: in such cases, it seems that the charterer is to be considered as the owner of the ship with respect to those persons. But as different decisions have taken place it is proper to notice them here.

13. In the case of *Parish* against *Crawford (c)*, an action was brought against the defendant as owner of a ship, upon a promise alledged to have been made by him to the plaintiff to convey in his ship a quantity of moidores from *London* to *Barbadoes*, which had not been delivered there. The facts of the case were, that the defendant, the owner, had chartered the ship to one *Fletcher* for the voyage in question for a certain sum, and *Fletcher* was to have the freight of goods, but the freight of passengers was reserved to the defendant; and the defendant appointed the master, and covenanted with *Fletcher* for the condition of the ship and behaviour of the master. *Fletcher* took on board the moidores and other goods of the plaintiff and other persons, and received the freight for them. For the defendant it was objected, that although the ship was his property, yet he was not owner in such a manner as to be liable to this action, but that *Fletcher* was for this purpose the owner. Chief Justice *Lee*, however, before whom the cause was tried, was of opinion that the action might be maintained; and the plaintiff recovered damages to the value of the ship and freight *(d)*. The sentiments delivered on this occasion by the Chief Justice were as follows "The true consideration is, whether by any thing done by "*Crawford*,

(b) *Trewhella* v. *Rowe*, 11 East, 435.

(c) Shortly reported in 2 Stra. 1251. The account of the case here given is taken from a manuscript note much fuller than the report.

(d) 12 *Geo.* 2. c. 15. A statute which limits the responsibility of the owners. See Part the Third, Chap. 5.

" *Crawford*, who is confessedly the owner of the vessel, " in chartering it to *Fletcher*, he has discharged himself " as owner? *Crawford* considers himself as the governor " of the ship, and so covenants for the government of it " during the voyage, and the ship was navigated by *his* " master. Upon what foundation then is an owner " chargeable, but upon these two considerations? *First*, " The benefit arising from the ship, which is the equitable " motive. *Secondly*, The having the direction of the " persons who navigate it. And it is upon these two " things taken together, that the implied contract arises. " Though *Crawford* has not that freight, which the mer- " chants pay for their goods, yet as he has the benefit of " the freight in general, he has that equitable motive " which makes him liable. With regard to *Fletcher*, what " *Crawford* has done is only giving him a power to put " goods on board. And it seems to me, the makers of the " act of parliament could not have any notion of such an " owner of the ship, for it speaks generally of owners of " ships; but this *Fletcher* is not to be considered as owner " of the ship in any light, but only as having a power to " make use of it in this way. If this was to be considered " in the nature of a mortgage, it would be delivering up " the ship for such time as the mortgage should be in " force. Therefore I think there is nothing appearing " upon this evidence, that discharges *Crawford* as the " owner of the ship."

14. In the case of *James* against *Jones & others (e)*, an action was brought against the defendants as owners of the ship *Sea-Flower* for the loss of a quantity of raisins on a voyage from *Faro* to *London*. One *Thomas*, the master of the ship, had, in his own name as master, and in the absence of the owners, chartered the ship to *Reed* and *Parkinson*

(e) *James* v. *Jones and others*, Guildhall Sit. after Trin. Term, 39 *Geo.* 3. There is a short note of this case in Espinasse's Nisi Prius cases, Vol. iii. p. 27.

Parkinson on a voyage from *Falmouth* to *Faro* and back to *London*; and *Reed* and *Parkinson* engaged by the charter-party to provide a full lading from *Faro*, and to pay a stipulated price per ton. The goods in question were shipped at *Faro*, by the consent of the agent of *Reed* and *Parkinson* at that place, and *Thomas*, the master, signed a bill of lading, engaging to deliver them to the plaintiff, "he paying freight per charter-party." These facts appearing at the trial of the cause before Lord *Kenyon*, his Lordship was of opinion, that *Reed* and *Parkinson* were, with respect to the plaintiff, the owners of the ship *pro hâc vice*; that the defendants, *Jones and others*, were not responsible to him, and consequently that the plaintiff could not maintain his action. Under this opinion the plaintiff and his counsel acquiesced, and did not apply to the Court for a further consideration of the subject. But the before-mentioned case of *Parish* against *Crawford*, does not seem to have been adverted to on this occasion. In a more recent case, in which it appeared at the trial, that a ship had been chartered by the defendants, who were the registered owners, to one *De Beur* on a voyage from *London* to *Surinam*, and was afterwards put up by him as a general ship, and that the plaintiff had shipped a quantity of oats which had been improperly sold by the master, and for which the action was brought, the late very learned Chief Justice of the Court of King's Bench held the defendants were not answerable, and the plaintiff was non-suited. The form of the bill of lading is not noticed in the report of this case, and therefore, I presume, it was not thought material at the trial *(f)*. The gentlemen, who were counsel for the plaintiff in this cause, were certainly aware of the case of *Parish* v. *Crawford*, but they acquiesced in the decision.

These two cases are inconsistent with the former, but they are conformable to the principle of judgments pronounced

(f) Mackenzie v. *Rowe and others*, 2 Campbell, 482.

nounced respectively by the Courts of King's Bench and Common Pleas on questions of Insurance, wherein it was decided, First *(g)*, that a deviation committed by the master, with the knowledge of the absolute owner, and which therefore could not, according to the law of *England*, be an act of barratry with respect to *him*, was an act of barratry with respect to a third person, who had hired the ship by a charter-party, and who was considered as owner for the particular voyage, with relation to the subject of that cause; Secondly *(h)*, that a wilful running ashore by the absolute owner, with the privity of the master, was an act of barratry against the merchant, under whose sole controul the entire vessel for a time was placed.

They are conformable also to the principle of another decision. The registered owner of a ship let the vessel at a certain rent, to the person who acted as master; this person ordered stores, which were supplied for the use of the ship, and for which an action was brought against the registered owner, but it was held that he was not answerable, because the master was not his servant, nor was the order given on his behalf *(i)*. And probably the case of *Parish* v. *Crawford* is not to be considered as law: for although the absolute owner might in each of these cases be ultimately answerable to the charterer of the ship, yet there was no contract, either express or implied, between him and the proprietors of the goods.

(g) *Vallejo* v. *Wheeler*, Cowp. 143.

(h) *Soares* v. *Thornton*, 7 Taunton, 627.

(i) *Frazer* v. *Marsh*, 2 Campbell, 517, and 13 East, 238.

CHAPTER THE SECOND.

OF PROPERTY IN BRITISH SHIPS.

1. ALL commercial nations have, for the advancement of their individual prosperity, conferred various privileges of trade upon the ships belonging to their own countrymen; and the Legislature of this nation has for the same purpose, at different periods, enacted laws suitable to the circumstances of the times, requiring, for the exercise of some particular branches of commerce, ships not only of the property of its own subjects, but also of the built of its own dominions; allowing other branches to ships the property only of its own subjects, without regard to the built; and, in others, in which foreign ships were suffered to participate, favouring those of its own subjects by a difference in the rate of duties. It has, however, at all times, been the policy of the Legislature, to confine the privileges of our trade, as far as was consistent with the extent of it, to ships built within the King's dominions; but it was reserved for the reign of his late Majesty to see the ship-building of the country advanced to such a state as to warrant the confinement of these privileges exclusively to ships of that description, or taken as prize in war. And, accordingly, this measure was carried into execution by a statute *(a)*, made in the 26th year of his late Majesty's reign; reserving, however, to such foreign-built ships, as were *then* the property of his subjects, the privileges to which they were then entitled by the existing laws. For the more effectual execution

(a) 26 *Geo.* 3. *c.* 60.

execution of this important measure of public policy, various new regulations were at the same time introduced, to ascertain the built and property of ships, which were afterwards improved by subsequent statutes *(b)*, as experience shewed that some particulars, notwithstanding the great attention paid to the original statute, and the great talents employed in framing it, had not been sufficiently provided for by it.

The great and perhaps the only original object of these statutes, was to advance the public policy of the state, by the notoriety of property obtained through the medium of a public Register, a measure adopted with numerous improvements from the wisdom of former times *(c)*. They were

(b) 27 *Geo.* 3. *c.* 19; 34 *Geo.* 3. *c.* 42 and 68; 35 *Geo.* 3. *c.* 58; 37 *Geo.* 3. *c.* 63.

(c) The registering of ships appears to have been first introduced into practice in this country by the Navigation Act, 12 *Car.* 2. *c.* 18. *s.* 10. A.D. 1660. For it is not mentioned in the Navigation Ordinance in the time of the usurpation; but the *Statute of Charles the Second* only requires *foreign* ships *British owned* to be registered. The *Statute* 7 & 8 *W.* 3. *c.* 22. *s.* 17. requires *British* or Plantation built ships *British owned*, if intended to be employed in the Plantation trade, and also *prize* ships, to be registered. And ships, for which Mediterranean passes were wanted, were also registered in consequence of a regulation at the Admiralty, although a Register was not required by Statute for *British ships* employed in the *Mediterranean* trade; as we learn from Reeve's History of the Law of Shipping and Navigation, p. 423. *Louis the Fourteenth*, by an *Ordinance* dated the 24th *October* 1681, required all his subjects to make a declaration in the Admiralty of their residence, of all ships belonging to them, whether built in *France* or foreign countries, and of the names of the several part-owners, who were to be *Frenchmen* only, and resident in *France*, in order to preserve the privileges of the national flag to his own subjects. See Valin on the French Ordinance, tom. 1. 564, &c. The first article of the *Hanseatic Ordinance* of 1614, prohibits the building of ships in the *Hanse Towns* to all, except citizens and persons having the particular permission of the Magistrates of the place. An Act of *Congress* of the 31st of *December* 1792, ch. 1. contains regulations for registering ships in the United States of *America*, the greater part of which correspond almost exactly with those of our *Statute* of 26 *Geo.* 3. *c.* 60. The national privileges of trade are confined to ships belonging to and commanded by Citizens of *America*, and either built within the *United States*, or belonging to *American* Citizens on the 16th of *May* 1789, and continually thereafter; or taken and condemned as prize in war; or forfeited for a breach of the laws of the *United States*.

were often, and upon the whole perhaps truly, considered beneficial in another point of view, namely, as calculated to prevent the commission of private fraud upon individuals: but the instances, in which fair and honest transactions are rendered unavailable through a negligent want of compliance with the forms directed by these and other statutes requiring a public register of conveyances, make the expedience of all such regulations, considered with reference to private benefit only, a matter of question and controversy. It happened also with regard to these statutes, as to all others of a similar kind, that doubts and difficulties arose upon their construction, and upon the application of general rules and enactments to particular cases. The matters to be provided for were very numerous and very various: the difficulty of framing positive regulations, even for objects of a limited nature, is much greater, than those, who have not tried the experiment themselves, or attended with candour to the experiments of others, are ready to admit. It will often happen that defects can be discovered, and inconvenience manifested, by experience alone. After an experience of somewhat more than thirty years, it was thought advisable to make many alterations, and to comprize the whole subject in one statute; and accordingly all the former Acts were repealed, and a new statute passed in the fourth year of the reign of his present Majesty, which took effect for general purposes on the first of January 1824 *(d)*. In the sixth year of the same reign, all the statutes relating to the Customs were repealed, in order to bring the whole of that extensive and complicated subject into a very few Acts *(e)*; and it was considered that by this measure the Register

(d) 4 *Geo.* 4. *c.* 41.

(e) Four hundred and forty-five Acts and parts of Acts were expressly repealed by the 6 *Geo.* 4. *c.* 105. and the whole matter, including the registry of ships, comprised in eleven Acts, viz. from *c.* 106. to 116. inclusive. In the next year, however, five of the repealed Acts were revived, a few other Acts repealed, and some few amendments made to the eleven Acts before mentioned, by the *st.* 7. *Geo.* 4. *c.* 48.

Register Act of the fourth year of that reign was virtually repealed. A new Act *(f)* was accordingly passed, which (with two or three other slight alterations introduced in the next year) is now the law for the registering of British ships.

The Act of the *sixth* year does not appear to differ from that of the *fourth* year, except by the introduction of two additional clauses relating to the repairs and manning of British ships, introduced to prevent the bad effects of combinations among shipwrights and seamen; the first of which is temporary, the latter permanent. The most important points of difference between the new regulations and the former, are, That it is no longer necessary to recite the certificate of register in a *contract* for the sale of a ship; and that in a bill of sale or other instrument intended to operate as a transfer of the property, it is sufficient to recite the principal contents of the certificate, and a provision is introduced, with a view to prevent the effect of certain errors in the recital *(g)*: That the indorsement on the certificate is to be made by the public officers, instead of the party transferring *(h)*: That a mortgagee or trustee for the payment of debts, is not to be deemed an owner *(i)*, nor his interest to be affected by the subsequent bankruptcy of the mortgagor or assignor, on the ground of reputed ownership *(k)*: That the specific share of every part-owner (and which is required to be one or more 64th parts) must be mentioned in the registry, except in the case of partners in trade, whose interest is to be considered as partnership property *(l)*: That only thirty-two persons shall be entitled to be legal owners as tenants in common, with a provision for the equitable title of minors, legatees, creditors, &c. and a provision also for joint-stock companies *(m)*; that more extensive powers are given

(f) 6 *Geo.* 4. *c.* 110. 7 *Geo.* 4. *c.* 48. *sect.* 25. 26. 27
(g) *Sect.* 36.
(h) *Sect.* 37.
(i) *Sect.* 45.
(k) *Sect.* 46.
(l) *Sect.* 32.
(m) *Sect.* 33.

given for a registry *de novo*; and that copies of affidavits and entries in the books of the Custom house are made evidence, in order to prevent the necessity of the attendance of the public officers to produce the originals *(n)*.

An enumeration of the commercial privileges of *British* ships, does not properly belong to this Treatise; but as they are now comprised in one statute and four sections of another *(o)*, and it has been necessary to quote some parts of the former of these statutes, it has been thought advisable to print the whole of it in the appendix.

The object of the Legislature, is to confine the privileges of *British* ships, to ships duly registered. This appears not only by the Register Act, but also by the Navigation Act *(o)*. By the Register Act, it is enacted, That in case any ship, not being duly registered, and not having obtained such certificate as in that Act is mentioned, which is the same as the certificate in the 4th Geo. 3, shall exercise any of the privileges of a *British* ship, the same shall be subject to forfeiture, and may be seized by any officer of the Customs, with a saving, however, of the privileges of ships formerly registered, until the time at which they shall be required by that Act to be registered *de novo (p)*; which is the time of the ship's first arrival and entry at the port to which she belongs, or at any other port in the same part of the United Kingdom, or in the same colony, plantation, island, or territory, unless it shall be certified on the former certificate by the collector and comptroller of the port to which the ship belongs, that further time has been granted by the commissioners of the Customs for ascertaining and registering the number of such shares as cannot then be ascertained *(q)*. And by the Navigation Act, it is enacted, That no ship shall be admitted to be a *British* ship, unless duly registered as such *(o)*.

But from this general enactment are excepted, first, *British*-built boats or vessels under fifteen tons burthen, wholly

(n) *Sect.* 43.
(o) 6 *Geo.* 4. *c.* 109. 4 *Geo.* 4. *c.* 48. *s.* 21. 22. 23. 24.
(p) 6 *Geo.* 4. *c.* 110. *s.* 4.
(q) Ibid. *sect.* 40.

wholly owned and navigated by *British* subjects, which, although not registered as *British* ships, shall be admitted to be *British* vessels, in all navigation in the rivers and upon the coasts of the United Kingdom, or of the *British* possessions abroad, not proceeding over sea, except within the limits of the respective colonial governments, within which the managing owners of such vessels respectively reside. Secondly, *British*-built boats or vessels wholly owned and navigated by *British* subjects, not exceeding the burthen of thirty tons, and not having a whole or a fixed deck, and being employed solely in fishing on the banks and shores of *Newfoundland*, and of the parts adjacent, or on the banks and shores of the provinces of *Canada*, *Nova Scotia*, or *New Brunswick*, adjacent to the Gulf of *St. Lawrence*, or on the north of *Cape Causo*, or of the islands within the same, or in trading coatwise within the said limits, which shall be admitted to be *British* boats or vessels, although not registered, so long as such boats or vessels shall be solely so employed *(r)*. Thirdly, ships built in the *British* settlements at *Honduras*, and owned and navigated as *British* ships, which shall be entitled to the privileges of *British* registered ships, in all direct trade between the United Kingdom and the said settlements; provided the master shall produce a certificate, under the hand of the superintendant of those settlements, that satisfactory proof has been made before him that such ship (describing it) was built in the said settlements, and is wholly owned by *British* subjects: provided also, that the time of the clearance of such ship from the said settlements for every voyage, shall be indorsed upon such certificate by such superintendent *(s)*.

From the language of the foregoing enactments, it does not appear that any ship is *absolutely* required to be registered; the register is necessary only for the purpose of conferring the privileges of a *British* ship: the forfeiture is only for exercising the privileges of a *British* ship, without having

(r) 6 *Geo.* 4. *c.* 109. *s.* 13. | *(s)* Ibid. *sect.* 14.

having obtained a certificate. Under the former statutes, it was decided, that a foreign built ship might legally be owned by *British* subjects, and employed by them in the same trade in which such a ship might be employed by aliens *(t)*. That case arose upon the convoy Act *(u)*, which contained an exception of ships not required to be registered. It does not appear that any question was made as to the legality of the voyage as depending on the cargo; the alien duties had been paid. The legality of the voyage in which *British* subjects may, as owners, employ a foreign built ship, will depend upon the particular voyage, and the cargo, with reference to the Navigation Act *(x)*, of which one of the general enactments is, "That no ship shall be admitted to be a ship of any par- "ticular country, unless she be wholly owned by subjects "of that country, usually residing therein, or under the "dominion thereof *(y)*."

I shall now proceed to abstract the enactments of the last Register Acts, and shall endeavour to arrange them in such a manner as to present the subject to the reader in a more lucid form than it appears in the statutes introducing or noticing such of the decisions on the former statutes as seem applicable to or illustrative of the present, and omitting all those whether quoted in the former editions of this book, or decided since, which were pronounced upon points not likely to arise again. And I propose to mention, 1. What ships are entitled to become and continue registered ships. 2. What persons may be registered as owners. 3. By what officers registry is to be made. 4. At what place registry is to be made. 5. What ships formerly registered must again be registered under the new Act, and at what time. 6. How the tonnage is to be ascertained. 7. What is to be specified in the certificate. 8. Regulations for the preservation of the ship's name. 9. Requisites on the part of the owners to obtain a registry. 10. Regulations

(t) *Long* v. *Duff*, 2 Bos. & Pull. 209.
(u) 43 *Geo.* 3. *c.* 57.
(x) See *Campbell and others* v. *Innes*, 4 B. & A. 426.
(y) 6 *Geo.* 4. *c.* 109. *s.* 15.

lations concerning the transfer of property in the ship. 11. Requisites on a change of the master. 12. When and how registry *de novo* is to be made. 13. In what cases a temporary certificate or licence may be granted. 14. Penalty for detention of the certificate. 15. Evidence of affidavits and books of registry. 16. Power of governors of colonies to stay suits. 17. Punishment for false oaths or documents. 18. Recovery and application of penalties.

And first—

What Ships are entitled to become and continue Registered Ships.

Ships entitled to be registered, are those only which are wholly of the built of the United Kingdom, or of the *Isle of Man*, or of *Guernsey* or *Jersey*, or of some of the colonies, plantations, islands or territories, in *Asia*, *Africa*, or *America*, or of *Malta*, *Gibraltar*, or *Heligoland*, belonging to his Majesty at the time of the building of such ships; or ships condemned in a Court of Admiralty as prize of war; or condemned in any competent court as forfeited for a breach of the laws made for the prevention of the Slave-trade; and which belong to his Majesty's subjects, duly entitled to be owners of registered ships *(z)*. But ships once registered, lose the privileges of British ships in three instances. As, first, A ship deemed or declared to be stranded or unseaworthy, and incapable of being recovered or repaired to the advantage of the owners, and for such reasons sold by order or decree of any competent court for the benefit of the owners, or other persons interested, shall be deemed to be lost or broken up, and never again entitled to the privileges of a *British*-built ship

(z) 6 *Geo.* 4. *c.* 110. *s.* 5. In order to save the necessity of repeated reference to the two statutes, the reader is desired to observe, that the six first sections of the two statutes correspond with each other; that the 7th and 8th sections of the 6 *Geo.* 4. are not not found in the 4th of *Geo.* 4. and consequently that the 9th and all the subsequent sections of the 6th *Geo.* 4. are numerically higher by two than the corresponding sections of the 4th *Geo.* 4.

ship *(a)*. Secondly, A *British* ship captured by and become prize to an enemy, or sold to foreigners, shall not again be entitled to the privileges of a *British* ship, unless condemned in a Court of Admiralty as prize of war, or in any competent court for a breach of the laws made for the prevention of the Slave-trade *(b)*. Thirdly, No ship shall continue to enjoy the privileges of a *British* ship after repair in a foreign country, if such repairs shall exceed the sum of 20*s*. per ton, unless such repairs shall have been necessary by reason of extraordinary damage sustained during her absence from the King's dominions, to enable her to perform her voyage and return; and on arrival, the master is required, upon her first entry, to report upon oath to the collector or comptroller of the Customs at the port of entry, that she has been so repaired, under penalty of 20*s*. per ton; and if it be proved to the satisfaction of the commissioners, that the ship was seaworthy when she last departed from his Majesty's dominions, and that no greater quantity of such repairs have been done than was necessary, the Commissioners may direct the collector and comptroller of the port at which she arrived, or where she may then be, to certify on the certificate of her registry, that it has been proved to the satisfaction of the commissioners of his Majesty's Customs, that her privileges have not been forfeited, notwithstanding the repairs done in a foreign country *(c)*. And it is further provided, that if the owners are unable to effect the necessary repairs in a *British* port by reason of combination of workmen, then in order that the intended voyage may not be frustrated, a power is given to the Privy Council, for two years after the 5th of July 1825, to issue an order, naming therein some foreign port to which the vessel may proceed to be there repaired, to such extent as may be necessary for the voyage in which she is engaged *(d)*.

The

(a) Sect. 9. *(b) Sect.* 10. *(c) Sect.* 6. *(d) Sect.* 7.

The privilege of a *British* ship appears to have been first given by the statute, 4 *Geo.* 4. *c.* 41. *s.* 5, to a ship condemned for breach of the laws made for the prevention of the Slave-trade. Under the former Register Acts it was decided, that such a ship could not be considered as prize of war, although the Judge of the Court of Vice Admiralty in which she was condemned, had certified that she was condemned as lawful prize *(e)*.

2. *What Persons may be registered as Owners.*

The owners must be subjects of *Great Britain (f)*. No foreigner may, directly or indirectly, have any part or share in the ship *(g)*. No person may be an owner of any ship authorized to be registered, who has taken the oath of allegiance to any foreign state, except under the terms of some capitulation, unless he shall afterwards become a denizen or naturalized subject of the United Kingdom; nor any person usually residing in any country not under the dominion of His Majesty, unless he be a member of some *British* factory, or agent for or partner in a house or copartnership, actually carrying on trade in *Great Britain* or *Ireland (h)*. But no greater number than thirty-two persons are entitled to be legal owners at one and the same time as tenants in common, or to be registered as such. This, however, is not to affect the equitable title of minors, heirs, legatees, creditors, or others, exceeding that number, duly represented by or holding from any of the owners within the said number, registered as legal owners of any shares. And if it shall be proved to the satisfaction of the commissioners of the Customs, that any number of persons have associated themselves as a joint stock company, for the purpose of owning any ship or ships, as the joint property

(e) The *King* v. *Collector and Comptroller of the Customs of London*, 1 Maule & Selwyn, 262.

(f) *Sect.* 5. ad finem.

(g) Form of the oath, *sect.* 14.

(h) *Sect.* 13. But a member of the lately dissolved Levant company, who was resident at any of the factories of the company, may *continue* to own his shares, although he shall continue to reside at any of the places where the factories had existed. 7. *Geo.* 4. *c.* 48. *sect.* 27.

property of such company, and that such company have duly elected or appointed any number, not less than three of the members of the same, to be trustees of the property in such ships; such trustees, or any three of them may, with the permission of the commissioners, take the oath required by the Act, before registry be made, except that instead of the names and descriptions of the other owners, they shall state the name and description of the company to which the ship shall belong *(i)*.

The Act also requires the property to be considered as divided into sixty-four parts, and the proportion held by each owner to be described in the registry, as being a certain number of sixty-fourth parts; and no person is entitled to be registered as an owner of any proportion not being an integral sixty-fourth part; but as it might happen that existing property could not be reduced by division into any number of integral sixty-fourth parts, the owners of other fractional parts are allowed to transfer their shares without stamp duty, and their right to such fractional parts is not to be affected by reason of their shares not having been registered; and any number of owners named and described in the registry, being partners in any house or co-partnership, actually carrying on trade in any part of his Majesty's dominions, may hold any ship or share thereof, in the name of their house or co-partnership, as joint owners thereof, without distinguishing the proportionate interest of each of such owners; and such ship or share thereof so held in co-partnership, shall be deemed to be partnership property, and shall be governed by the same rules, both in law and equity, as relate to and govern all other partnership property *(k)*.

The language of the 13th section, before quoted, is not precisely the same as that of the old statute, the words of which are, "no subject of his Majesty, whose usual resi- "dence is in any country not under the dominion of his "Majesty,

(i) Sect. 33. *(k) Sect.* 32.

" Majesty, shall be deemed or entitled, during the time " he shall continue so to reside, to be the owner in whole " or in part of any *British* ship authorized to be registered " by that Act, unless, &c." *(l)*. Under that statute it was held, that an occasional residence for the purpose of obtaining a colourable qualification would not give a title; that no person was entitled who had not his *usual* residence in *Great Britain*, or in the dominions belonging to the crown, unless he was within some of the exceptions; that if a man went to another country, and there had a more usual residence than in this, he was no longer entitled to the same privileges, and that a person who was continually shifting his residence between the *British* dominions, and the *American* states, so as not to have what under any extension could be deemed an usual residence in the *British* dominions, did not come within the description of the statute *(m)*.

It will be observed, that the 33d section before quoted, contains a proviso in favour of the equitable title of the persons, and under the circumstances therein mentioned. Under the former statutes, the present Lord Chancellor (*Eldon*) took notice of the difference between an equitable title set up under the act or contract of parties and trusts arising by operation of law, or the act of God. The latter he considered as being out of the operation of the statutes, the former as being restrained by it *(n)*.

The 32d section before quoted, contains a provision regarding partners in trade, allowing them to be joint owners, and making their property partnership property, both at law and in equity; and it seems that such partners are to be considered as one person only in estimating the number of thirty-two persons, mentioned in the 33d section, which speaks of tenants in common; probably also, the name of each

(l) 26 *Geo.* 3. *c.* 60. *s.* 8.

(m) By the present Lord *Stowell* in the case of the ELEANOR, *Hall*, 1 Edwards, 148.

(n) See 6 Vesey, jun. 739, 15 Vesey, jun. 68.

each partner must be mentioned and described in the registry; the safer mode certainly will be to name them all in the registry, and this will be the most effectual mode of showing that the whole interest is *British*. Under the former statutes, it was held, that property in a ship, although bought with partnership money, if registered in the names of one or more only of the partners, must be considered, both at law and in equity, as being the property of those only who were named in the registry *(o)*. And accordingly in cases of bankruptcy, the value of such property was distributed among the separate creditors of the persons named in the registry, and not among the joint creditors of the whole partnership; and the same law must, as I apprehend, still prevail, unless partnership property be duly registered according to the requisites of the new Act.

3. *By what Officers Registry is to be made.*

The persons authorized and required to make registry and grant certificates, in respect of ships, to be registered in the following countries, &c. are—

The collector and comptroller of his Majesty's customs, in any port in the United Kingdom of *Great Britain* and *Ireland*, and in the *Isle of Man*:

The principal officers of his Majesty's customs in the islands of *Guernsey* and *Jersey*, together with the governor, lieutenant-governor or commander-in-chief of those islands respectively:

The collector and comptroller of his Majesty's customs of any port in the colonies, plantations, islands and territories to his Majesty belonging in *Asia*, *Africa* and *America*, together with the governor, lieutenant governor or commander-in-chief of such colonies, plantations, islands and territories respectively:

The

(o) See the case of *Camden* v. *Anderson*, 5th Term Reports, 709. *Curtis* and *Perry*, 6th Vesey, jun. 739. *Yallop ex parte*, 15 Vesey, jun. 60. *Houghton ex parte*, and *Gribble ex parte*, 17 Vesey, jun. 251.

The collector of duties at any port in the territories under the government of the *East India* company, and other territories belonging to his Majesty, within the limits of the charter of the said company, payable to the said company, or any other person of the rank in the said company's service of senior merchant, or of six years standing in the said service, being respectively appointed to act in the execution of this Act by any of the governments of the said company in *India*, in any ports in which there shall be no collector and comptroller of his Majesty's customs:

The governor, lieutenant-governor, or commander-in-chief of *Malta*, *Gibraltar*, *Heligoland* and *Cape of Good Hope* respectively; with a proviso that no ship shall be registered at *Malta*, *Gibraltar* or *Heligoland*, except such as are wholly of the built of those places respectively; and such ships shall not be registered elsewhere. And such ships so registered shall not be entitled to the privileges and advantages of *British* ships in any trade between the said United Kingdom and any of the colonies, plantations, islands or territories in *America*, to his Majesty belonging.

And wherever it is directed or provided by the statute, that any act, matter or thing shall and may be done or performed by, to, or with any collector and comptroller of his Majesty's customs, the same may be done or performed by, to, or with the principal officers of customs in the islands of *Guernsey* or *Jersey*, together with the governor, lieutenant-governor or commander-in-chief of those islands respectively; and also by, to, or with such collector or other person in *India*, in the service of the *East India* company as aforesaid; and also by, to, or with the governor, lieutenant-governor or commander-in chief of *Malta*, *Gibraltar*, *Heligoland*, or *Cape of Good Hope*, and according as the same act, matter or thing is to be done or performed at the said several and respective places, and within the jurisdiction

jurisdiction of the said several persons respectively. Also, wherever it is directed or provided that any act, matter or thing shall or may be done or performed by, to, or with the commissioners of his Majesty's customs, the same may be done or performed by, to, or with the said commissioners, or any two or more of them, in *England, Ireland* or *Scotland* respectively; and also by, to, or with the governor, lieutenant-governor or commander-in-chief of any place where any ship may be registered under the authority of this Act, so far as such act, matter or thing can be applicable to the registering of any ship at such place *(p)*.

The former Register Acts contained no provision for registering ships in the territories under the government of the *East India* company, and there being no officers of his Majesty's customs in those territories, there was no person who could make registry there. This omission appears to have been first supplied by the 55 *Geo.* 3. *c.* 116. Before the passing of that statute, a person, for whom a ship was building in *India*, invited another to take one-sixteenth share, who consented to do so, and paid a large sum of money toward the price thereof, which however was never finally ascertained. The ship afterwards came to *England*, and was there registered by the person for whom she was built, in the names of himself and another, omitting the name of the person who had agreed to take the sixteenth. Upon a question afterwards arising between this person and the executors of the other, it was held, that he had no legal interest in the ship *(q)*.

4. *At what Place Registry is to be made.*

Ships built at *Malta, Gibraltar* or *Heligoland*, are to be respectively registered at those places *(r)*. No registry shall be made, or certificate thereof granted, in any other port

(p) 6. *Geo.* 4. *c.* 110. *sect.* 3.
(q) *Stringer* v. *Murray and others*, 2 B. & A. 248.
(r) *Sect.* 3.

port or place than that to which the ship shall properly belong, except so far as relates to such ships as shall be condemned as prizes in any of the islands of *Guernsey, Jersey* or *Man*, which ships shall in future be registered in manner after mentioned; but that every registry and certificate granted in any port or place to which any such ship does not properly belong, shall be utterly null and void to all intents and purposes, unless the officers shall be specially authorized to make such registry and grant such certificate in any other port, by an order in writing, under the hands of the commissioners of his Majesty's customs; and at every port where registry shall be made in pursuance of the Act, a book shall be kept by the collector and comptroller, in which all the particulars contained in the form of the certificate, as by this Act directed to be used, shall be duly entered; and every registry shall be numbered in progression, beginning the numeration at the commencement of every year; and the collector and comptroller shall forthwith, or within one month at the farthest, transmit to the commissioners of customs a true and exact copy, together with the number of every certificate which shall be by them so granted *(s)*.

Every ship shall be deemed to belong to some port at or near to which some or one of the owners, who shall take and subscribe the oath required by this Act, before registry be made, shall reside *(t)*.

Ships taken and condemned as prize or forfeiture, are to be registered either at *Southampton, Weymouth, Exeter, Plymouth, Falmouth, Liverpool* or *Whitehaven (u)*.

5. *What Ships formerly registered must be again registered under the new Act, and at what time.*

From and after the commencement of this Act (viz. 5th Jan. 1826), or from and after the first arrival and entry of any ship after such commencement, at the port to which

(s) Sect. 11. *(t)* Sect. 12. *(u)* Sect. 30.

which she belongs, or at any other port in the same part of the United Kingdom, or in the same colony, plantation, island or territory, no certificate of registry shall be in force, except such as shall be granted under the authority of this Act, or which shall have been granted under the authority of the Act of the 4th year of the reign of his present Majesty, and in which the share or shares, as in this Act described, held by each owner, shall be set forth, unless it shall be certified thereon by the collector and comptroller of the port to which such ship belongs, that farther time has been granted by the commissioners of customs for ascertaining and registering the number of such shares as cannot then be ascertained *(x)*.

Upon the first registry, in compliance with this Act, of any ship previously registered, no stamp duty shall be charged upon the bond; and if the certificate of such former registry then delivered up shall have a *Mediterranean* pass attached thereto, no stamp duty shall be charged on account of the new *Mediterranean* pass *(y)*.

6. *How the Tonnage is to be ascertained.*

On this subject, the reader is requested to refer to the sections from 16 to 20, inclusive, of the statute, which is printed in the Appendix.

7. *What is to be specified in the Certificate.*

The certificate specifies the name, occupation and residence of every owner in the proportions mentioned on the back of it, the name of the ship, the place to which she belongs, her tonnage, the name of the master, the time and place of the built or of condemnation, the name of the surveying officer, the number of decks and masts, the length, breadth, height between decks, if more than one, or depth of the hold, if only one deck, whether rigged with

(x) Sect. 35. *(y) Sect.* 36.

with a standing or running bowsprit, the description of her stern, whether carvel or clinker built, and gallery, and kind of head, if there be any. And on the back are indorsed the names of the several owners, with the number of sixty-fourth shares held by each *(z)*.

8. *Preservation of the Ship's Name.*

It shall not be lawful for any owners to give any name to a ship other than that by which she was first registered. The owners of every registered ship shall, before the ship after such registry shall begin to take in any cargo, paint in white or yellow letters, of a length not less than four inches, upon a black ground, on some conspicuous part of the stern, the name by which the ship shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same, under a penalty of £.100 for permitting the ship to begin to take in any cargo before the name has been painted, or for wilfully altering, erasing, obliterating, or in anywise hiding or concealing the name (unless in the case of square-rigged vessels in time of war), or for describing her in any written or printed paper, or other document, by any name other than that by which she was first registered, or for verbally describing the ship by any other name to any officer of his Majesty's revenue in the due execution of his duty *(a)*.

9. *What is required on the part of the Owners to obtain the Registry.*

No registry is to be made, or certificate granted, until an oath be taken and subscribed in the form set forth in the statute. This oath, in the case of individuals, is to be made by the owner, if only one: if two owners, and both resident within twenty miles of the place of registry, by

(z) *Sect.* 2. *(a)* *Sect.* 24.

by both; if both or either resident at a greater distance, by one only; if more than two owners, by the greater part, not exceeding three, if resident within twenty miles, unless a greater number shall be desirous to join in taking the oath; or by one, if all, or all except one, are resident at a greater distance; and if the required number do not attend, oath must further be made by such as do attend, that the absent are not resident within twenty miles, and have not wilfully absented themselves to avoid taking the oath, or are prevented by illness from attending. The oath to be thus made contains the name of the ship, her port, and master, the description of the ship, the name, occupation and residence of every part owner, with other particulars tending to prove them to be subjects of his Majesty, and concludes with a positive averment, that no foreigner, directly or indirectly, hath any share or interest in the ship. If the ship belong to a corporate body, the oath is to be made by the secretary or other proper officer of such body, and instead of the names and descriptions of the owners, he is to state the name and description of the company or corporation to which the ship belongs *(b)*.

At the time of obtaining the certificate, a bond must be executed by the master, and such of the owners as personally attend, to be approved of and taken by the person authorized to make the registry, in a penalty varying in proportion to the burthen of the ship, but never exceeding £.1,000 but if the master cannot attend at the time of registry, by reason of the absence of himself and the ship at some other port, a separate bond may be given by him at the port where the ship may then be, which shall be transmitted to the port where the ship is to be registered; and the two bonds shall be of the same effect as if the parties had bound themselves jointly and severally in one bond; and every such bond is to be as a security that the certificate shall not be lent, sold, or disposed of, but solely used for the

(b) Sect. 14 and 15.

the service of the ship for which it is granted; and in case the ship be lost, captured, or destroyed, or otherwise prevented from returning to the port to which she belongs, or shall have forfeited the privileges of a *British* ship, or been condemned for illicit trading, or have been taken in execution for debt and sold accordingly, or sold to the crown, or have been registered *de novo*, the certificate, if preserved, shall be delivered up within one month after the arrival of the master in any port in his Majesty's dominions, to the collector and comptroller of some port in *Great Britain*, or the *Isle of Man*, or of the *British* plantations, or to the governor and so forth of *Guernsey* and *Jersey*; and if any foreigner shall have purchased or become entitled to the whole or a part of the ship, the certificate must be given up at the time and place mentioned in the statute, which vary according to the different circumstances therein mentioned *(c.)*

Every person who shall apply for a certificate, shall produce to the persons authorized to grant it, a true and full account, under the hand of the builder, of the proper denomination, and of the time when, and the place where, the ship was built; and also an exact account of the tonnage, together with the name of the first purchasers, (which account the builder is hereby directed and required to give under his hand, on the same being demanded by the person applying for the certificate); and shall also make oath before the persons authorized to grant the certificate, that the ship for which the certificate is required, is the same with that which is so described by the builder *(d)*.

In the case of a prize ship, or of a ship condemned for breach of the laws for the prevention of the slave trade, the owner must produce a certificate of the condemnation, under the hand and seal of the Judge of the court, and an account, in writing, of all the particulars contained

(c) Sect. 21. *(d) Sect.* 25.

contained in the form of the certificate of registry, made and subscribed by one or more skilful persons, to be appointed by the court to survey the ship, and must also make oath of the identity of the ship *(e)*.

The property in every ship, of which there are more than one owner, shall be taken and considered to be divided into sixty-four parts or shares; and the proportion held by each owner shall be described in the registry, as being a certain number of sixty-fourth parts or shares; and no person shall be entitled to be registered as an owner in respect of any proportion of a ship, which shall not be an integral sixty-fourth part or share; and upon the first registry, the owners, who take the oath required by this Act before registry be made, shall declare upon oath, the number of such parts or shares held by each owner, and the same shall be so registered accordingly *(f)*.

And whenever any ship which had been registered before the 31st Dec. 1823, (viz. the day on which the Act passed in that year, for the registering of vessels, came into operation), and shall not have been registered *de novo* since that day, and before the commencement of this Act, (viz. 5th Jan. 1826), shall be registered *de novo*; the number of shares held by each owner shall be registered as far as the same be practicable; and to that intent, the owners, who shall take the oath required by this Act before registry be made, shall produce the bills of sale or other titles of themselves, and of the other owners, in order that the number of such shares held by each of them may be ascertained and registered accordingly; and if the registry of such ship then in force shall be the first registry, and the shares of any of the owners shall remain the same as they were at the time of such registry, and the owners, or any one of them, who shall attend to take the oath required by this Act before registry be made, shall be the same as were the owners, or one of them, who took the oath before such first registry was made, such original owner

(e) *Sect.* 29. *(f)* *Sect.* 32.

owner or owners, instead of producing the bills of sale, shall declare upon oath, to the best of his or their knowledge and belief, the number of shares held by him or them, or by any other original owner or owners, whose proportionate property in such ship shall have remained unchanged; but if at the time of such registry *de novo*, such owner or owners shall make oath of their inability to produce the bill or bills of sale, or to give any certain account or proof of the share or shares of the other previous owners, or some or any one of them, in such case, the collector and comptroller may register the ship, without requiring the shares of such owners to be declared and specified *(g)*.

A ship-builder, who gave to a person for whom he was building a ship, shortly before the actual completion thereof, the builder's certificate, required by the Register Act, in order that his customer might obtain a certificate of registry in his own name (which was accordingly done), was held thereby to have declared that the *general* property of the ship was vested in his customer, but not thereby to have lost his right to retain the possession until the residue of the stipulated price was paid*(h)*.

10. *Regulations concerning the Transfer of Property in the Ship.*

And first on a Transfer generally.—When and so often as the property in any ship, or any part thereof, belonging to any of his Majesty's subjects, shall, after registry, be sold to any other of His Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or equity; but no bill of sale shall be deemed void, by reason of any error in such recital, or by the recital of any former, instead of the existing

(g) *Sect.* 34.

(h) *Woods and another* v. *Russel*, 5 B. & A. 942.

existing certificate, provided the identity of the ship therein intended be effectually proved thereby *(i)*.

No bill of sale, or other instrument in writing, shall be valid and effectual to pass the property in any ship, or in any share thereof, or for any other purpose, until it shall have been produced to the collector and comptroller of the port at which the ship is registered, or to the collector and comptroller of any other port at which she is about to be registered *de novo*, as the case may be, nor until such collector and comptroller respectively shall have entered in the book of registry, or of intended registry, as the case may be, (and which they are respectively by this Act required to do, upon the production of the bill of sale, or other instrument for that purpose,) the name, residence and description of the vendor or mortgagor, or of each, if more than one; the number of shares transferred; the name, residence, and description of the purchaser or mortgagee, or of each, if more than one, and the date of the bill of sale, or other instrument, and of the production of it; and further, if such ship is not about to be registered *de novo*, the collector and comptroller of the port where she is registered, are required to indorse the aforesaid particulars of such bill of sale or other instrument, on the certificate of registry of the ship, when it shall be produced to them for that purpose in a prescribed form; and to give notice thereof to the commissioners of customs; and in case the collector and comptroller shall be desired so to do, and the bill of sale or other instrument shall be produced to them for that purpose, then they are to certify, by indorsement upon the bill of sale or other instrument, that the particulars before-mentioned have been so entered in the book of registry, and indorsed upon the certificate as aforesaid. But such entry in the book of *intended* registry, shall not be made until all the requisites of law for the immediate register of the ship or vessel in such book, have been complied with; nor shall such entry be valid

(i) Sect. 31.

valid, or certified on the bill of sale, until the registry *de novo* of the ship or vessel shall have been duly made, and the certificate thereof granted *(k)*.

When the particulars of any bill of sale or other instrument, by which any ship, or any share thereof, shall be transferred, shall have been so entered in the book of registry, the bill of sale, or other instrument, shall be valid and effectual to pass the property thereby intended to be transferred, as against all persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees, who shall first procure the indorsement to be made upon the certificate in manner mentioned, in the following clause *(l)*: It is declared by the Act to be the true intent and meaning thereof, that when property has been transferred more than once, the several purchasers and mortgagees, when more than one appear to claim the same property, shall have priority, not according to the respective times when the particulars of the instrument of transfer are entered in the book of registry, but according to the time when the indorsement is made upon the certificate: and it is enacted, that when and after the particulars of any instrument of transfer shall have been entered in the book of registry, the officers shall not enter in the book the particulars of any other instrument, purporting to be a transfer by the same vendor or mortgagor, of the same ship or share thereof, to any other person, unless thirty days shall elapse from the day on which the particulars of the former instrument were entered in the book; or in case the ship was absent from the port, at the time when the particulars of the former instrument were entered in the book, then unless thirty days shall have elapsed from the day on which the ship arrived at her port. And in case the particulars of two or more instruments shall have been entered, then the officers shall not enter the particulars of any other instrument, unless the like period of thirty days shall

(k) Sect. 37 and 7 *Geo.* 4. *c.* 48. *sect.* 26. *(l) Sect.* 38.

shall have elapsed from the respective days before-mentioned. Whenever an entry has been made in the book of registry of more than one transfer by the same owner of the same property, the officers shall indorse on the certificate the particulars of that instrument of transfer, under which the person claims property, who shall produce the certificate for that purpose within thirty days after the entry of his instrument of transfer, or within thirty days after the ships return to her port, in case she was absent at the time of the entry of the particulars. And in case no person shall produce the certificate within either of the said spaces of thirty days, then the officers shall indorse on the certificate the particulars of the instrument of transfer, to such person as shall first produce the certificate for that purpose; but if the certificate be lost, mislaid, or detained, so that the indorsement cannot in due time be made thereon, on proof of this being made by the purchaser or mortgagee, or his known agent, to the satisfaction of the commissioners of customs, they may grant such further time as may to them appear necessary for the recovery of it, or for a registry *de novo;* and a memorandum of the time so granted shall be made in the book of registry; and during such time no other bill of sale shall be entered for the transfer of the same ship, or the same share thereof *(m)*.

If the certificate shall be produced to the collector and comptroller of any port where the ship may then be, after any bill of sale shall have been recorded at the port to which she belongs, together with such bill of sale, containing a notification of such record, signed by the collector and comptroller of such port, as directed by this Act, the officers of the other ports are to indorse on the certificate (being required so to do) the transfer mentioned in such bill of sale; and they are to give notice thereof to the collector and comptroller of the port to which the ship belongs, who shall record it in like manner as if they had made

(m) Sect. 39.

made such indorsement themselves, but inserting the name of the port at which the indorsement was made. But the officers of such other port shall first give notice to the officers of the port to which the ship belongs, of such requisition made to them to indorse the certificate; and the officers of the port to which the ship belongs, shall thereupon send information to the officers of such other port, whether any or what other bill or bills of sale have been recorded in the book of the registry of such ship; and the officers of such other port, having such information, shall proceed, in manner directed by this Act in all respects, to the indorsing of the certificate, as they would do if such port were the port to which the vessel belonged *(n)*.

If a ship, or the share of any owner who may be out of the kingdom, shall be sold in his absence, by his known agent or correspondent, under his directions, either expressed or implied, and acting for his interest in that behalf, and such agent or correspondent who shall have executed a bill of sale to the purchaser, shall not have received a legal power to execute it, the commissioners of customs may, upon application made to them, and proof to their satisfaction of the fair dealings of the parties, permit such transfer to be registered, if registry *de novo* be necessary, or to be recorded and indorsed, as the case may be, as if such legal power had been produced; and if it shall happen that any bill of sale cannot be produced, or if, by reason of distance of time, or the absence or death of parties concerned, it cannot be proved that a bill of sale for any shares in any ship had been executed, and registry *de novo* shall have become necessary, the commissioners may, upon proof to their satisfaction of the fair dealings of the parties, permit such ship to be registered *de novo*, in like manner as if a bill of sale for the transfer of such shares, had been produced. But in any of these cases good and sufficient security shall be given to produce

(n) Sect. 40.

produce a legal power or bill of sale, within a reasonable time, or to abide the future claims of the absent owner, his heirs and successors, as the case may be, and at the future request of the party whose property has been so transferred, without the production of a bill of sale from him or from his lawful attorney, the bond shall be available for the protection of his interests, in addition to any powers or rights which he may have in law or equity against the ship, or against the parties concerned, until he shall have received full indemnity for any loss or injury sustained *(o)*.

Secondly, If made as a Security.—When any transfer for a ship, or of any shares, shall be made only as a security for the payment of debt, either by way of mortgage, or of assignment to a trustee for the purpose of sale for the payment of debt, in every such case the collector and comptroller of the port where the ship is registered, shall in the entry in the book of registry, and also in the indorsement on the certificate thereof in manner before directed, state and express that such transfer was made only as a security for the payment of debt, or by way of mortgage or to that effect; and the person to whom such transfer shall be made, or any other person claiming under him as a mortgagee or trustee only, shall not by reason thereof be deemed to be the owner of such ship or shares, nor shall the person making such transfer be deemed by reason thereof to have ceased to be an owner any more than if no such transfer had been made, except so far as may be necessary for the purpose of rendering the ship or shares so transferred, available by sale or otherwise for the payment of the debt for securing the payment whereof such transfer shall have been made *(p)*.

When any such transfer as last mentioned has been made and duly registered, the right or interest of the mortgagee or other assignee shall not be in any manner affected by any act of bankruptcy committed by such mortgagor or assignor,

(o) Sect. 44. *(p) Sect.* 45.

assignor, after the time when such mortgage or assignment shall have been so registered, notwithstanding such mortgagor or assignor at the time he shall so become bankrupt shall have in his possession, order, and disposition, and shall be the reputed owner of the ship or shares so by him mortgaged or assigned; but such mortgage or assignment shall take place of and be preferred to any right, claim or interest which may belong to the bankrupt's assignee *(q)*.

Upon the subject of transfer of property, it seems fit to notice a distinction between this and the former statutes. A recital of the certificate of registry is not now made necessary to the validity of an executory contract or agreement for the transfer of property, as was expressly required by the 34th *Geo.* 3. *c.* 68. *s.* 14; neither is an indorsement of such a contract on the certificate now required, which was held to be necessary under that statute *(r)*; and by the language of the new Act, if the certificate be not recited in the bill of sale, *the transfer* shall not be valid and effectual, whereas by the 26 *Geo.* 3. *c.* 60. *s.* 17, *the bill of sale* was made void.

The latter difference, however, is probably of no great importance; for under the former statutes, covenants not depending upon the transfer of the property, such as a covenant to pay money for the security whereof a ship had been mortgaged, was held not to be avoided by reason of an omission to recite the certificate *(s)*. Whereas covenants depending upon a contract to transfer, such as an agreement to indemnify the seller against expenses, to which he might be liable on account of his interest in the ship, were held to be void in a case where the contract to transfer was invalid *(t)*. This distinction between covenants, which, according to their subject, are connected with or dependent upon the transfer, and those which are unconnected

(q) *Sect.* 46.

(r) *Mortimer and others* v. *Fleeming*, 4 B. & C. 120.

(s) *Kerrison* v. *Cole*, 8 East, 231.

(t) *Biddell* v. *Leeder and another*, 1 B. & C. 327.

connected with or independent of it may be found applicable to the new statute.

It will be observed, that by the present Act, it is sufficient to recite in a bill of sale, the principal contents of the certificate of registry; and that the instrument is not to be deemed void for any error in the recital, if the identity of the ship therein intended be effectually proved thereby.

The departure from the language of the old statutes, appears to have been intended to prevent the inconvenience that had been experienced by mistakes in the recital of the certificate *(u)*, though even under them, a mistake apparent upon the face of the instrument was held not to vitiate it *(x)*.

It was made a question, under the old Acts, whether in the recital of the certificate of registry, it was necessary to mention the indorsement that had been made upon it *(y)*. An indorsement of a transfer made by a bill of sale, cannot be recited in it, because it must be made after the bill of sale, but it may still become a question whether prior indorsements, and especially the indorsement made at the time of granting the certificate, and which is referred to in it, ought not to be recited. The safer way will be to recite it, and thereby avoid questions.

Some parts of the 37th and three following sections, appear to have been intended to obviate questions, that had arisen under the former Acts, as to the time at which a bill of sale should be deemed to take effect, to the exclusion of intermediate acts and conveyances, upon which subject there had been much doubt and difficulty *(z)*.

And

(u) See *Westerdale* v. *Dale*, 7 Term Reports, 306.

(x) *Rolleston and others* v. *Smith*, 4 Term Reports, 161.

(y) *Cappadoce* v. *Condor*, 1 Bos. & Puller, 483.

(z) See *Moss and others* v. *Charnock*, 2 East 399. *Moss and another* v. *Mills and another*, 5 East, 144. *Heath* v. *Hubbard*, 4 East, 110. *Bloxam and others* v. *Hubbard*, 5 East, 107. *Hubbard* v. *Johnston*, 3 Taunton, 177. *Hayton and another* v. *Jackson and others*, 8 East, 511. *Palmer and another* v. *Moxon*, 2 M. & S. 43. *Richardson and others* v. *Campbell and another*, 5 B. & A. 196. *Hodgson and another* v. *Brown and another*, 2 B. & A. 427.

And by transferring the power of indorsing the transfer on the certificate, from the party making the transfer to the public officers, some part of the inconvenience that had been experienced under the former Acts may possibly be avoided. In the cases of death or bankruptcy, or absence of a vendor, they may certainly be avoided, though perhaps not in all cases of disputes between vendor and purchaser *(a)*.

Some of the acts required by the language, as well of the new as of the old statutes, to give validity to a bill of sale, are to be done by the public officers. Under the old statutes, it was held that an omission by the public officers would not invalidate a transfer of the property *(b)*.

Under these statutes also, it was decided that their provisions were not confined to the transfer of property to a stranger, but applied also to a transfer by one part owner to another *(c)*. This decision appears manifestly applicable to the present statute. A conformity with the statutes was in several cases held requisite to the validity of a bill of sale, intended by way of mortgage or security; and it was held in one case, that although the person to whom the security was given, had the controul or the possession of the ship which was then in a port, he did not obtain a lien upon or right to detain the ship against the assignees of the person by whom the security had been given, the requisites of the statutes, as relating to his bill of sale, not having been complied with *(d)*. But a lien may, notwithstanding the Acts, be acquired upon the certificate of registry, or other papers belonging to a ship, in like manner as upon any other deeds or papers *(e)*.

The

(a) See *Thompson and another* v. *Smith and others*, 1 Madd. 395. and the cases there referred to.

(b) *Ratchford* v. *Meadows*, 3 Esp. N. P. Ca. 69. *Heath* v. *Hubbard*, 4 East, 110. *Underwood* v. *Miller and another*, 1 Taunton, 387.

(c) *Speldt* v. *Letchmere*, 13 Vesey, jun. 588.

(d) *Wilson and others*, v. *Heather*, 5 Taunton, 642.

(e) *Mestaer and another* v. *Atkins*, 5 Taunton, 381, and 1st Marshall, 76.

The enactment of the 45th section, that a mortgagee or trustee for payment of debts shall not, by reason of the transfer to him, be deemed to be an owner, appears to have been intended to prevent the inconvenience, and put an end to the questions, which had arisen under the former statutes, upon the effect of the legal interest in the ship, which, under those statutes, had been vested in the mortgagee or trustee, without any qualification. This led to the bringing of several actions against mortgagees, for repairs or necessaries furnished to the ship after the date of the mortgage, and there was some contrariety of decision upon that point. Ultimately it appears to have been thought, that the right to sue for such repairs and necessaries, depended rather upon the person to whom the credit was given, than upon the legal title to the ship. In some cases, however, the legal title might furnish the best evidence of the person to whom the credit was given *(f)*.

The 46th section seems intended to remedy the inconvenience of considering the mortgagor as reputed owner under the statute 21 *Jac.* 1. *c.* 19. *s.* 11. in cases of bankruptcy; it having been decided, that the special enactments of the Register Acts, and a compliance with them did not defeat the operation of that statute, where the mortgagor was suffered to act and appear as owner, which in many cases he was allowed to do *(g)*.

11. *What is required on a change of the Master.*

When the master, or other person, having or taking the charge or command of a registered ship shall be changed, the master or owner shall deliver to the persons authorized to make registry and grant certificates, at the port where the change shall take place, the certificate of registry

(f) See before Part I. c. 1. s. 11. page 17.

(g) *Hay and others* v. *Fairbairn*, 2 B. & A. 193. *Monkhouse and others* v. *Hay and another*, 4 B. Moore, 549.

registry belonging to the ship, who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of it to the proper officer of the port or place where the ship was last registered, who shall likewise make a memorandum of it in the book of registers, and shall forthwith give notice thereof to the commissioners of customs; but before the name of the new master shall be indorsed on the certificate, he shall give a bond, in the like penalties, and under the same conditions, as are contained in the bond required to be given at the time of the registry *(h)*.

12. *When and how Registry de novo is to be made.*

Whenever the owner or owners, who shall have subscribed the oath, shall have transferred all his or their share or shares in the ship, the same shall be registered *de novo*, before the ship shall depart from the port to which she shall then belong, or from any other port in the same part of the United Kingdom, or the same colony, plantation, island, or territory, unless a temporary certificate be obtained in the manner to be hereafter mentioned *(i)*.

If the certificate of registry be lost or mislaid, so that it cannot be found or obtained for the use of the ship when needful, and proof thereof be made to the satisfaction of the commissioners of customs, they shall permit the ship to be registered *de novo*, and a certificate thereof to be granted; or a temporary licence may be granted in such cases, and in the manner to be hereafter mentioned. But before such registry *de novo* be made, the owners and master shall give bond to the commissioners, in such sum as to them shall seem fit, with a condition

(h) Sect. 22.—By 6 *Geo.* 4. *c.* 107. *s.* 125. The officers of the customs may refuse to permit any person to act as master whose name shall not be inserted in or indorsed upon the certificate of registry as master.

(i) Sect. 12.

dition, that if the certificate shall at any time afterwards be found, the same shall be forthwith delivered to the proper officers of the Customs, to be cancelled, and that no illegal use has been or shall be made thereof, with their or his privity or knowledge. And if, instead of registry *de novo*, a temporary licence be granted, and the ship surveyed for that purpose, the certificate of such survey shall be preserved by the collector and comptroller of the port to which the ship shall belong; and in virtue thereof, the commissioners may and are required to permit the ship to be registered, after her departure, whenever the owners shall personally attend to take the oath required, and shall also comply with all other requisites of the Act, except so far as relates to the bond to be given by the master; which certificate of registry the commissioners shall transmit to the collector and comptroller of any other port, to be by them given to the master upon his giving such bond, and delivering up the licence which had been granted for the then present use of the ship *(k)*.

If any person shall be convicted of the offence of wilfully detaining a certificate, and it shall appear to any justice or other magistrate, that it is not lost or mislaid, but wilfully detained, he is to certify the detainer, refusal and conviction, to the persons who granted the certificate, who shall, on the terms and conditions of law being complied with, make registry of the ship *de novo*, and grant a certificate thereof, conformably to law, notifying on the back of it, the ground upon which the ship was so registered *de novo*. Also, if the person detaining a certificate shall have absconded, and proof of this be made to the satisfaction of the commissioners of customs, the ship may be registered *de novo*, as in the case wherein the certificate is lost or mislaid *(l)*.

If after registry, a ship shall in any manner whatever be altered, so as not to correspond with all the particulars

(k) Sect. 26. *(l) Sect.* 27. See post page 56.

ticulars contained in her certificate, she shall be registered *de novo*, as soon as she returns to the port to which she belongs, or to any other port in the same part of the United Kingdom, or in the same colony, plantation, island or territory; on failure whereof, the ship shall, to all intents and purposes, be considered and deemed and taken to be a ship not duly registered *(m)*.

And if it shall become necessary to register a ship *de novo*, and any share shall have been sold since she was last registered, and the transfer of such share shall not have been recorded and indorsed in manner directed by the Act, the bill of sale thereof shall be produced to the collector and comptroller of the customs, who are to make registry of the ship, otherwise the sale shall not be noticed in the registry *de novo*; but upon the future production of the bill of sale, and of the existing certificate of registry, the transfer shall be recorded and indorsed, as well after such registry *de novo*, as before *(n)*.

If upon any change of property in a ship, the owners shall desire to have the same registered *de novo*, although not required by the Act, and the proper number of owners shall attend at the custom house at the port to which the ship belongs, for that purpose, the collector and comptroller of the customs at that port may make registry *de novo* of the ship at the same port, and grant a certificate thereof; the several requisites in this Act mentioned and directed being first duly observed and complied with *(o)*.

Further directions on this subject are given in the 44th Section, the contents of which have been already mentioned *(p)*.

(m) *Sect.* 28.
(n) *Sect.* 41.
(o) *Sect.* 42.
(p) Page 49.

13. *In what cases a Temporary Certificate or Licence may be granted.*

It has been already mentioned, that when the owners who subscribe the oath have transferred all their shares, the ship shall be registered *de novo*, before departure from port. But if the owners cannot in sufficient time comply with the requisites of the Act, so that registry may be made before it shall be necessary for the ship to depart upon another voyage, the collector and comptroller of the port where the ship may then be, are authorized to certify upon the back of the existing certificate, that the same is to remain in force for the voyage on which the ship is then about to sail *(q)*.

If a ship be built in any of the colonies, plantations, islands or territories, in *Asia*, *Africa* or *America*, for owners residing in the United Kingdom, such ship may proceed by a direct or circuitous voyage to any port of the United Kingdom, there to import a cargo previous to registry, provided the master or agent for the owners shall produce to the collector and comptroller of the port at or near which the ship was built, or from which she shall be cleared for her voyage, the certificate of the builder required by the Act, and make oath of the names and descriptions of her principal owners, and of her identity, and that no foreigner, to the best of his knowledge and belief, has any interest therein. And upon this, the officers are to cause the ship to be surveyed and measured, and give to the master, a certificate, stating when, where, and by whom she was built, her description, tonnage and other particulars, required on registry, and the voyage for with the ship is cleared by them, and such certificate shall, for such voyage, have the force of a certificate of registry *(r)*. And such certificate shall also be in like force for the navigation of such ship, for any voyages whatever, during the term of two years from

(q) Sect. 12. *(r) Sect.* 12. and 7 *Geo.* 4. *c.* 48. *sect.* 25.

from the date of such certificate, if such ship shall not sooner arrive at some place in the United Kingdom *(r)*.

If a certificate be lost or mislaid, and proof thereof be made to the satisfaction of the commissioners of customs, and the ship be absent and far distant from the port to which she belongs, or by reason of the absence of the owners, or any other impediment, registry cannot be made in sufficient time, the commissioners may grant a licence for the present use of the ship, which for the time, and to the extent specified therein, shall be of the same force as a certificate of registry. But before such licence shall be granted, the master shall make oath that the ship has been registered as a *British* ship, naming the port where, and the time when the registry was made, and all the particulars contained in the certificate thereof, to the best of his knowledge and belief; and shall also give a bond similar to that which is required to be given on registry *de novo* in the case of a certificate lost or mislaid; but before such licence shall be granted, the ship shall be surveyed as if registry *de novo* were about to be made *(s)*.

It has been before mentioned, that in case a certificate be unlawfully detained, the commissioners of the customs may allow the ship to be registered *de novo*; they may, however, in such cases, instead of the registry *de novo*, grant a licence for the present use of the ship, in like manner as in the case of a certificate of registry lost or mislaid *(t)*.

In the cases wherein a ship is required to be registered under the new Act, for the purpose of setting forth the shares held by each owner, the collector and comptroller of the port to which the ship belongs, may certify that further time has been granted by the commissioners of the customs, for ascertaining and registering the number of such shares as cannot then be ascertained *(u)*.

(r) Sect. 12. and 7 *Geo.* 4. c. 48. *sect.* 25.
(s) Sect. 26.
(t) Sect. 27.
(u) Sect. 37.

14. *Penalty for Detention of the Certificate.*

In case the master, or any other person who shall have received or obtained, by any means or for any purpose whatever, a certificate of registry, whether such master or other person be a part owner or not, shall wilfully detain and refuse to deliver up the same to the proper officers of the customs for the purposes of the ship, as occasion shall require, any owner or owners of the ship may make complaint on oath against the master or other person who shall so detain and refuse to deliver up the same, of such detainer and refusal, to any justice of the peace residing near to the place where such detainer and refusal shall be in *Great Britain* or *Ireland*, or to any member of the supreme court of justice, or any justice of the peace in the islands of *Jersey*, *Guernsey* or *Man*, or in any colony, plantation, island or territory to his Majesty belonging in *Asia*, *Africa* or *America*, or *Malta*, *Gibraltar* or *Heligoland*, where such detainer and refusal shall be in any of the places last-mentioned; and on such complaint the said justice or other magistrate shall and is hereby required, by warrant under his hand and seal, to cause such master or other person to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of the master or other person, or otherwise, that the certificate is not lost or mislaid, but is wilfully detained by the master or other person, such master or other person shall be thereof convicted, and shall forfeit and pay the sum of £. 100, and on failure of payment thereof, he shall be committed to the common gaol, there to remain without bail or mainprize for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than three, or more than twelve months *(x)*; and on the

(x) Sect. 27.

the detainer being certified to the persons who granted the certificate, registry *de novo* may be made as beforementioned *(y)*.

15. *Evidence of Affidavits, and Books of Registry.*

The collector and comptroller of the customs at any port or place, and the persons acting for them respectively, shall, upon every reasonable request by any persons whatsoever, produce and exhibit for their inspection and examination any oath or affidavit taken or sworn by any owner or proprietor, and also any registry or entry in any book of registry required by this Act to be made or kept relative to any ship, and shall, upon every reasonable request by any persons whomsoever, permit them to take a copy or copies, or an extract or extracts thereof respectively, and the copy of any such oath or affidavit, register or entry, shall, upon being proved to be a true copy thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original, and without the testimony and attendance of any collector or comptroller or other person acting for them respectively, in all cases, as fully and to all intents and purposes, as such original, if produced, could or might legally be admitted or received in evidence *(z)*.

Wherever the title to the ship comes strictly and properly into question, no claim can be received in opposition to the modes of conveyance required by the statutes. But there are many cases in which the possession of property, and acts of ownership exercised upon it, furnish presumptive evidence of a title to it; and some also, in which the possession alone is sufficient to maintain an action, although the legal title may be outstanding in another. And it has been held that a *British* ship does not, as to these points, differ from any other sort of property.

Thus,

(y) Page 54. *(z)* *Sect.* 43.

Thus, in an action *(a)* on a policy of insurance effected upon the ship *Chesterfield*, while absent on a foreign voyage, wherein the interest in the ship was alleged to be in *Robertson* and *Walker*, and in which it became a question, whether that allegation was sustained upon the evidence given in the cause, the learned Chief Justice of the King's Bench, (*Lord Ellenborough*,) in delivering the opinion of the Court on this point, expressed himself as follows: "As to the first point made in this case, on "the part of the defendant, viz. that the ownership alleged "was not sufficiently proved: it was proved by the "captain (*Brooks*) in the ordinary way, that the owners "by whom, as such, he was appointed and employed, "were the persons in whom the ownership is by the "declaration averred to be. And though it afterwards "appeared by his answers, on cross-examination, that the "ownership was derived to those persons under a bill of "sale, executed by himself, as attorney to one *Lawrence "Williams* the former owner, it did not on that account "become necessary for the plaintiffs to produce that bill "of sale, or the ship's register, or to give any further proof "of such their property; the mere fact of their possession "as owners being sufficient *primâ facie* evidence of owner-"ship, without the aid of any documentary proof of "title-deeds on the subject, until such further evidence "should be rendered necessary in support of the *primâ "facie* case of ownership, which they made, in conse-"quence of the adduction of some contrary proof on the "other side. No such contrary proof was, however, in "this case, given on the part of the defendant. For the "prior register in the name of *Lawrence Williams*, as "owner in 1799, and a subsequent register to the same "person upon a sale at the *Cape*, in 1802, under a decree "of the Court of Vice-Admiralty, and which were given "in

(a) Robertson & another v. *French*, 4 East, 130. And see to the same effect, *Thomas & others* v. *Foyle*, 5 Esp. N. P. Ca. 88.

" in evidence by the defendant, were perfectly consistent " with a title in other persons *in the mean time*, agreeable " to the averment in the declaration."

Again, in an action of trover brought for divers quantities of timber, wood, and materials, it appeared at the trial that the ship *Spring*, with the cargo, belonging to a merchant in *London*, was stranded on the coast of *Norfolk*: he went thither and saved the cargo; and afterwards sold the vessel as she lay, being then a complete hull, to the plaintiff for 600*l.* which the plaintiff paid him. He sold her as a ship, but the transfer was not made in the way required by the statutes. The plaintiff employed several men for some days in endeavouring to get the ship off, and superintended their exertions, and considerable hopes of success were entertained for a time; but in the end the ship went to pieces. The plaintiff, by his agents, then endeavoured to preserve the wreck; some pieces floated away and drifted on the farm of the defendant, who collected them together, broke up part in an unskilful and injurious manner, and refused to deliver them up to the plaintiff's agent, who demanded them of him. The cause was tried before Lord Chief Justice *Mansfield*; and the plaintiff was nonsuited on the ground of want of title, from the imperfection in the mode of transferring the property from the merchant to him. The cause was afterwards brought before the Court of Common Pleas for consideration, and after argument, the Chief Justice and the two other Judges *(b)* present, agreed in opinion that the plaintiff ought to have recovered. The ground of the decision was, that the plaintiff was in the actual possession, and the defendant a mere wrong doer, without any colour of title; and that although the plaintiff had failed to establish a complete title on account of the want of compliance with these statutes, yet he claimed under one who had a perfect title, and who was not

(b) Mr. Justice *Lawrence*, and Mr. Justice *Chambre*.

not now contesting the matter, and he had the possession against those who wrongfully interfered without colour of right; and his situation was compared to that of an agister, carrier, factor, and other bailées, whose title a mere wrong-doer is not allowed by law to dispute. A new trial was accordingly directed, and the plaintiff ultimately succeeded in the cause *(c)*.

It was the practice, for a considerable time, to produce the register from the custom-house at trials at *Nisi Prius* as proof of title, and the proof was received without question or objection. In one case indeed, Lord *Ellenborough* received the register as *primâ facie* evidence of ownership, in an action brought for stores supplied to a ship; declaring, however, that he would admit contrary evidence on the part of any of the defendants, to show that they had not assented to their names being placed on the register *(d)*. But this matter having in other causes been brought before the Courts at Westminster, it has been held that the register alone does not furnish even *primâ facie* evidence *to charge* a person as owner of a ship, in a suit between private individuals *(e)*. Such an use of the register was certainly not in the contemplation of the Legislature: and it is obviously possible, although not very likely to happen, that the name of a person may be placed on the register without his assent. A bill of sale duly and formally executed by an apparent vendor, but not accepted by the intended purchaser, will not transfer the property to him, and consequently is not evidence to *charge* him, unless it appears to have been accepted by him *(f)*. Neither is the affidavit made by a third

(c) Sutton v. *Buck*, 2 Taunton, 302.

(d) Stokes v. Carne and others, 2 Camp. Rep. at N. P. 339.

(e) Frazer v. *Hopkins & another*, 2 Taunton, 5. *Smith* v. *Fuge*, the younger, 3 Campbell, 456, and *Recusse* v. *Myers*, Id. 475.

(f) Tinkler v. *Walpole*, 14 East, 226. *Cooper and another* v. *South and others*, 4 Taunton, 802.

a third person, in order to obtain a register, to be received in evidence *against* the parties named in it, without some proof of their adoption and assent. *A fortiori*, a part-owner, who to an action brought against himself, has pleaded in abatement, that there are other part-owners, who ought to be joined with him in the suit, cannot sustain his plea by the bare production of a register containing their names (*g*). An action was brought against three persons of the names of *Humble, S. Holland & Williams*, to recover the price of a quantity of rope furnished by the plaintiffs at Liverpool, in the month of *January* 1810, for the use of the ship *Susannah*. *Holland & Williams* had become bankrupts: and the question was, whether *Humble* was liable. The order was given in the name of the owners of the *Susannah*, by the clerk of a mercantile house at *Liverpool*, trading under the firm of *S. Holland & Co.* In order to charge the defendant *Humble* as a part-owner, the defendants produced the following documentary evidence. 1. A certificate of registry at *Liverpool*, dated the 8th of June 1808, naming *S. Holland*, the defendant *Humble*, and one *Strickland*, as part-owners, which appeared to have been granted upon the affidavit of *Holland & Strickland*. 2. An indorsement on the certificate, dated the 14th of June 1808, importing that *Strickland* had sold his interest to *Holland & Humble*. 3. Another indorsement, dated the 21st of November 1809, recording a transfer of a moiety as made by *Humble & Holland* to the defendant *Williams*, on the 7th of October in that year, while the ship was at sea, and which was signed by *Holland*, as attorney for *Humble* (*h*). 4. Another indorsement on the certificate, *dated the 7th of March* 1811, importing a transfer of the whole by the assignees of *Holland & Williams*, then bankrupts, and by *Humble* to other persons:

(*g*) *Flower* v. *Young*, 3 Campbell, 240.

(*h*) This was probably intended to convey the whole of *Humble*'s interest, and was drawn out in this form by mistake.

persons: this was signed by *Humble*. It will be observed of these documents, that the three first might have been made without the knowledge or privity of *Humble*; and therefore, according to the foregoing cases, were not evidence to charge him: and that the last was made long after the sale of the goods, and therefore could not have given any information to the sellers at the time of sale, if they had then resorted to the custom-house in order to learn the names of the owners of the ships. On the part of the defendant it was shewn, that he had at a former period been in partnership with *Holland* at *Liverpool*, under the firm of *Humble & Holland*, and they had sold the ship to a person of the name of *Kinneard*, who sent her to sea; but this sale was not noticed at the custom-house: that *in December* 1808, the partnership of *Humble & Holland* was dissolved, and *Holland* entered into a new partnership with *Williams*, under the firm of *Samuel Holland & Co.* The name of the new firm was painted on the counting house, and the business of winding up the concerns of the old partnership was removed to another place. *Holland & Williams* re-purchased the ship of *Kinneard*; and on her return from the voyage on which he had sent her, they fitted her out in January 1810, when the goods in question were furnished. Upon these facts, considered without regard to the operation of these Acts of Parliament, it will be obvious, that *Humble* was not interested in the ship at the time when the goods were ordered, and was not one of the persons who gave the order, or who were intended to be benefited by the supplies that the plaintiffs had furnished. So that if he were chargeable for these goods, he could be chargeable only under the evidence of the certificate and its indorsements. And the Court held that he was not chargeable *(i)*.

It may be observed, that in all these cases the evidence was offered *against* a person in order to charge him: it has

(i) Mac Iver & another v. *Humble and others*, 16 East, 169.

has also been decided, that the register is not evidence in favour of a party producing it, as the proof of title to sustain the allegation of interest in an action in a policy of insurance on a ship *(k)*.

From these cases it appears hat it may often be necessary to prove that the affidavit made to obtain registry of a ship, was actually made by the person therein named as the deponent, and consequently it may sometimes happen that the production of a copy will be insufficient for the purpose intended, notwithstanding this enactment of the statute, for the statute makes the copy evidence in those cases only where the original, if produced, would be evidence; and it has appeared that the production of the original, without proof of the signature, has been ineffectual.

16. *Power of Governors of Colonies to Stay Suits.*

Any governor, lieutenant governor, or commander-in-chief of any of his Majesty's colonies, plantations, islands, or territories, may and is required, if any suit, information, libel, or other prosecution or proceeding of any nature or kind whatsoever, shall have been commenced, or shall hereafter be commenced in any court whatever in any of the said colonies, plantations, islands or territories respectively, touching the force and effect of any register granted to any ship, upon a representation made to any such governor, &c. to cause all proceedings thereon to be stayed, if he shall see just cause so to do, until his Majesty's pleasure shall be known and certified to him by his Majesty; and such governor, &c. is hereby required to transmit to one of his Majesty's secretaries of state, to be laid before his Majesty in council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be stayed, and such documents,

(k) Pirie and another v. *Anderson and another*, 4 Taunton, 652

documents (properly verified), as he may judge necessary for the information of his Majesty *(l)*.

17. *Punishment for false Oaths or Documents.*

A false oath is to be punished as wilful perjury. Any person who shall counterfeit, erase, alter or falsify any certificate or other instrument directed by the Act, or who shall make use of any such falsified certificate or other instrument, or wilfully grant any certificate or other instrument, knowing it to be false, is subjected to a penalty of 500*l*. *(m)*.

18. *Recovery and Application of Penalties.*

Penalties incurred under this Act are to be recovered and disposed of as penalties incurred for offences against the laws of the customs; and officers concerned in seizures or prosecutions are to recover the like share of the produce of a seizure or penalty *(n)*.

(l) Sect. 48.—And see as to the power of the Attorney General to enter a nolle prosequi, 6 *Geo.* 4. *c.* 108. *s.* 101.

(m) Sect. 49.

(n) Sect. 50. See 6 *Geo.* 4. *c.* 108, *s.* 100, 101, and *s.* 64, 65, & 66.

CHAPTER THE THIRD.

OF PART-OWNERS.

1. A SHIP is usually conveyed by bill of sale, or some writing of that nature, to different persons, in several and distinct shares; and, consequently, the several part-owners thereby become tenants in common with each other of their respective shares: each having a distinct, although undivided, interest, in the whole; and upon the death of any one, his share goes to his own personal representatives, and does not accrue to the others by survivorship *(a)*. It is proposed to consider the nature of their interest, *first*, with relation to each other; and *secondly*, with relation to strangers.

2. FIRST. A personal chattel, vested in several distinct proprietors, cannot possibly be enjoyed advantageously by all without a common consent and agreement among them: to regulate their enjoyment in case of disagreement is one of the hardest tasks of legislation; and it is not without wisdom, that the law of *England* in general declines to interfere in their disputes, leaving it to themselves, either to enjoy their common property by agreement, or to suffer it to remain unenjoyed, or perish by their dissension; as the best method of forcing them to a common consent for their common benefit. But of ships,

(*a*) This is the most usual practice. If the interests are not severed and distinguished in this way, but the entire ship is granted to a number of persons generally, it is apprehended they become joint-tenants at law, and that the rule *jus accrescendi inter mercatores locum non habet*, which is applicable to a ship, is to be enforced only in a Court of Equity.

ships, " which are built to plough the sea, and not to lie " by the walls," commercial nations consider the actual employment as a matter, not merely of private advantage to their owners, but of public benefit to the state, and therefore have laid down certain positive rules in order to favour this employment, and to prevent the obstinacy of some of the part-owners from condemning the ship to rot in idleness. It sometimes happens, that several persons become part-owners in a ship under a fixed compact and settled agreement among them for the employment of it, or that by common consent they delegate the management of their common concern to one of them, who by a very intelligible figure of speech is called the husband of the ship; who is to exercise an impartial judgment in the employment of tradesmen, and the appointment of officers, and to be careful that his choice in the selection of a master be not biassed by any private pecuniary transaction *(b)*. Nothing is then left for the law of the state but to enforce the compact and agreement of the parties, according to its own mode of administering justice in analogous cases. It is only when the enjoyment of the property has not been thus settled by the parties, that it becomes necessary to inquire what mode the law of the country has prescribed for the regulation of it. Some foreign writers *(c)* on maritime law have laid it down as a rule, that if a ship is in need of repair, and one part-owner is willing to repair it, and another unwilling, he who is willing may repair it at their common expence; and if the other will not pay his quota within four months, he shall lose his share in the ship: and they found their doctrine upon a passage in the Digest *(d)*, in which the same

(*b*) *Card and another* v. *Hope*, 2 Barnewall & Cresswell, 661.

(*c*) *Straccha de Nav. Pars.* 2. *Num.* 8. The author cites two others, who had written before him, and is as usual cited in his turn by *Roccus* and others, who have written after him. In the same passage he very gravely tells us, that ships often want repairs, and as gravely cites the Digest to prove his proposition.

(*d*) Dig. 17. 2. 52. 10.

same opinion is delivered with regard to the repairs of a house. But I do not find this rule adopted in practice in any country, and in case of the poverty of the party it would be extremely cruel.

3. The ordinances of *Oleron* and *Wisbuy* are silent on this subject of disagreement among part-owners as to the employment of a ship. By the ordinance of the *Hanse Towns (e)*, if the owners disagree as to the freighting of the ship, the most voices shall carry it, and yet the master may take money on bottomry for those who will not contribute their part to the outfit. The *French* ordinance *(f)* directs, that in all cases, which concern the common interest of the owners, the opinion of the majority in value shall be followed. The ordinance of *Rotterdam (g)* gives power to a majority possessed of above half the ship to let it out on freight, and to bind all the part-owners thereby, and to raise money for the outfit, either by borrowing it on bottomry, or by disbursing for the shares of the other owners, who appear unwilling to contribute after due notice. And the same ordinance *(h)* even authorizes the owners of above half the ship to sell it for the general account.

4. The law of this country appears to possess an important advantage over all the ordinances that have been cited; because, while it authorizes the majority in value to employ the ship "upon any probable design," it takes care to secure the interest of the dissentient minority from being lost in the employment, of which they disapprove. And for this purpose it has been the practice of the Court of Admiralty from very remote times to take a stipulation from those, who desire to send the ship on a voyage, in a sum

(e) *Art.* 59. I have followed the translation given in *Malyne*. The words, as given in the *Us & Coutumes de la Mer*, are, "*le plus de trois em-*" "*portera sur les autres*," which *Cleirac* interprets to mean three more on one side than on the other.

(*f*) Liv. 2. Tit. 8. Des Proprietaires, Art. 5.

(*g*) *Art.* 172. 2 *Magens*, 108. See also on this point *Weskett* on Insurance, tit. *Bottomry*, sect. 3 & 4.

(*h*) *Art.* 171. 2 *Magens*, 108.

sum equal to the value of the shares of those, who disapprove of the adventure, either to bring back and restore to them the ship, or to pay them the value of their shares *(i)*. When this is done, the dissentient part-owners bear no portion of the expences of the outfit, and are not entitled to a share in the profits of the undertaking; but the ship sails wholly at the charge and risk, and for the profit of the others *(k)*. This security may be taken upon a warrant obtained by the minority to arrest the ship; and it is incumbent on the minority to have recourse to such proceedings, as the best means of protecting their interest; or, if they forbear to do so, at all events they should expressly notify their dissent to the others, and if possible, to the merchants also, who freight the ship. For it has been decided *(l)*, that one part-owner cannot recover damages against another by an action at law upon a charge of fraudulently and deceitfully sending the ship to foreign parts, where she was lost. And it has also been decided in the Court of Chancery, that one part-owner cannot have redress in equity against another for the loss of a ship sent to sea without his assent *(m)*. These decisions are consonant to the general rule of law, that where one tenant in common does not destroy the common property, but only takes it out of the possession of another, and carries it away, no action lies against him; but if he destroys the common property, he is liable to be sued by his companion. And in a case tried before Chief Justice *King*, wherein it appeared that one part-owner had forcibly taken a ship out of the possession of another, secreted it, and changed its name; and that it afterwards came into the possession of a third person, who sent it to *Antigua*, where it was sunk and lost; the Chief Justice left

(i) Form of such a security, Appendix, N° VI.

(k) *Anon.* 2 Chan. Ca. 36. Trin. T. 32 Car. 2. and by *Holt.* Ch. J. in *Boson* v. *Sandford*, Carth. 63.

(l) *Graves* v. *Sawcer*, Sir T. Raym. 15. 1 Keb. 38. & 1 Lev. 29.

(m) *Strelley* v. *Winson*, 1 Vern. 297. Skin. 230.

left it to the jury to say, under all the circumstances of the case, whether it was not a destruction of the ship by the means of the defendant; and they finding it to be so, the plaintiff recovered the value of his share. The Court of Common Pleas afterwards approved of the direction of the Chief Justice *(n)*. If a part owner expressly notify his dissent, the Court of Chancery will not compel him to contribute to a loss *(o)*. If the minority happen to have possession of the ship, and refuse to employ it, the majority also may by a similar warrant obtain possession of it, and send it to sea, upon giving such security.

5. It was indeed formerly doubted in *Westminster Hall*, whether this practice of the Court of Admiralty was not an unfounded assumption of jurisdiction in a matter not within its cognizance, because arising at home and upon land; and in a case before the Court of Exchequer *(p)*, in the reign of *Charles the Second*, Chief Baron *Hale* and the other Barons took time to consider of the point, and it does not appear that any decision was then made upon it. In a case, which came before the Court of King's Bench *(q)* very

(n) Barnardiston v. *Chapman & another*, 1 *Geo.* 1. Sir Peter King's Cases, MS. The cause was twice tried: at the first trial a verdict was found for the plaintiff, subject to a case, which stated only the title of the parties, and that the defendants by force took the ship out of the plaintiff's possession, and carried it away. The case was argued at the chambers of the Chief Justice, before him, and *Tracy* and *Dormer*, Justices, and a new trial ordered by consent. The trial mentioned in the text was the *second* trial. A *third* trial was moved for and refused. A full note of this case is now printed in 4 East, 121.

(o) Horn v. *Gilpin*, Amb. 255. In this case it was said, that the ground of decision mentioned in Vernon's Report of *Strelly* v. *Winson*, *viz.* that recourse should have been had to proceedings in the Admiralty, is mis-stated there, and that the real ground of decision was, that the part-owner who complained had not *expressly* dissented: and it appears by Skinner's Report, that there had been no express prohibition of the voyage on his part.

(p) Justice v. *Brown*, Hil. T. 19. & 20 *Car.* 2. Hardres, 473. This was before the flame of jealousy, that once prevailed in Westminster Hall against the Courts at Doctors Commons, had expired.

(q) Knight v. *Berry*, 1 W. & M. Carth. 26. Comb. 109. Rep. temp. Holt. 647. 1 Show. 13. The three first reporters say, a prohibition was granted; but from the report in Shower (who however says he did not take the case) the jurisdiction of

very soon after Chief Justice *Holt* presided there, it was held by that Court that the practice was unlawful, and the Chief Justice is reported to have said, that the majority would not be without remedy, as they might bring an action upon the case at the common law against the others for refusing their assent, and therein recover damages equivalent to the profits, which might have been made on the voyage. But the remedy thus proposed seems very difficult on account of the uncertainty of the profits to be made by a voyage, and wholly inadequate to the ends of public policy, as it leaves the ship unemployed. And accordingly there are several later decisions of the Courts at *Westminster Hall*, recognizing and confirming the jurisdiction of the Court of Admiralty, both as to the taking of such security, and enforcing the performance of the stipulation upon the loss of a ship. Two of these decisions took place about eight years after the case which I have last mentioned, and that case is not quoted in the report of either of them: one in the Court of King's Bench *(r)*, but in the absence of Chief Justice *Holt;* the other in the Court of Common Pleas *(s)*; in both of which the authority of the Court of Admiralty was acknowledged; within a few years afterwards, however, the same point again came before the Court of King's Bench *(t)* in two other instances, at the last of which the Chief Justice is reported to have been present, and the Court on both occasions directed

of the Court of Admiralty seems to have been admitted. This appears to be the same case as *King* v *Perry*, 3 Salk. 23. in the report of which Chief Justice *Holt* is represented to say, that the stipulation in question *was* unlawful.

(r) Lambert v. *Acretree*, 1 Ld. Raym. 223. East. T. 9 *W.* 3. On a motion for a prohibition to the Admiralty on a suit there upon the stipulation.

(s) Blacket v. *Ansley*. 1 Ld. Raym. 235. Trin. T. 9 *W.* 3. upon the like motion as the last case.

(t) More v. *Rowbotham*, 6 Mod. 162. East. T. 3 *Ann.* and *Degrave* v. *Hedges*, 2 Ld. Raym. 1285. East. T. 6 *Ann.* upon the same motion. The Court ordered the plaintiff to declare in prohibition in both these cases.

directed the case to be put into a course of solemn decision; but nothing more is reported to have been done upon it. In the reign of *George the Second* another application was made to the Court of King's Bench, to stay proceedings instituted in the Court of Admiralty, to compel security to be given before the departure of a ship on a voyage, of which some of the part-owners disapproved; but the Court of King's Bench refused to do so *(u)*. In the last case *(x)*, which I find in the books on this subject, a part-owner, possessed of a small share, instituted a suit in the Court of Admiralty against the major part-owner, who was also master, and who insisted upon making a voyage with the ship, praying that the ship might be sold, or the party have such other remedy as might be thought proper by the Admiralty; and the other applied to the Court of King's Bench to prohibit the Admiralty from proceeding in the suit; but Chief Justice *Lee* said, "I have no doubt but the Admiralty has a power "in this case to compel a security, and this jurisdiction "has been allowed to that Court for the public good. "Indeed, the Admiralty has no jurisdiction to compel "a sale, and if they should do that, you might have a "prohibition after sentence: or we may grant a prohi-"bition against selling, or compelling the party to sell, "or to buy the shares of others." This was agreed to by the whole Court, and the case ended by prohibiting the Court of Admiralty to direct a sale, but leaving the Court at liberty to compel security. By this determination the law appears to have been finally settled; but the progress of it may not have been uninteresting to the learned reader.

6. It does not appear that any of the cases, which I have just referred to, arose upon an equal division of voices or interests

(u) Dimmock v. *Chandler*, 2 Stra. 890. Fitz. 197.

(x) Ouston v. *Hebden*, 1 Wils. 101. It does not appear by the report, that the Court of Admiralty was proceeding to direct a sale.

interests in the ship; but a learned civilian *(y)*, who wrote towards the end of the seventeenth century, having spoken of this power of the majority, adds, that the same thing may also be effected by the one part only, in case of equality in partnership; this doctrine is adopted by *Molloy (z)*, and is followed in the practice of the Court of Admiralty.

The Court of Admiralty having jurisdiction to detain a vessel, at the instance of one part-owner, until the others give security to the extent of their shares, *a fortiori*, it must have such a jurisdiction to detain a vessel, in a suit instituted by the real owner against a mere wrong-doer *(a)*.

Though the Court of Admiralty is open all the year round to applications by part-owners, to restrain the sailing of ships without their consent, the amount of the respective shares must be apparent; for if the amount of them is a subject of dispute, the Court of Chancery will interfere, and, by injunction, restrain the sailing of the ship, till the amount of the share, for which security is to be given, shall be ascertained, which will probably be by reference to the Master *(b)*.

7. We have seen that the Court of Admiralty cannot, *in any case*, compel any of the part-owners to sell his interest. *(bb)* The *French* Ordinance *(c)* prohibits one part-owner of a ship from forcing his companion to a sale (which by the *French* laws one tenant in common might in general do) except in case of equality of opinions upon the undertaking of a voyage. But a part-owner may by our law dispose of his interest to another person at any time;

(y) Godolphin, in the introduction to his view of the Admiralty Jurisdiction.

(z) Book 2. ch. 1. sect. 2. And see to the same effect *Cleirac*'s note on the 59th article of the *Hanseatic* ordinance.

(a) By the Court, in the matter of Blanchard, Baxter and others 2 Barnewall and Cresswell, 244.

(b) Haly v. *Goodson and another*. 2 Merivale 77.

(bb) Ouston v. *Hebden*. 1 Wils. 101. Cited in the preceding page.

(c) Liv. 2. Tit. 8. Des proprietaires, art. 6.

time; a rule better adapted to the present state of commerce than that *(d)* which formerly prevailed among some of the nations of the continent, and which did not permit the sale of a ship until after a possession of three or more years; or at least not till after the performance of one voyage at the charge and risk of the part-owners *(e)*. The old rule appears to have been framed with a view to the interest of the master, who in former times was a principal owner, and was the person who, with the pecuniary assistance of the other owners, generally caused the ship to be built in the expectation of being employed in the command; an expectation that might be defeated, if the others could sell their shares to strangers, who acquiring a majority of interest, might appoint a friend of their own *(f)*.

8. With regard to the repairs of a ship and other necessaries for the employment of it, one part-owner may, by ordering these things on credit, render his companions liable to be sued for the price of them, unless their liability be expressly provided against *(g)*. Yet if the person who gives the credit on such an occasion, does not at the time know that there are other part-owners, he *may* sue him alone, from whom he receives the orders *(h)*. But one part-owner cannot, by ordering an insurance of the ship, without authority from another, charge the other with any part of the premium, unless the other afterwards assent to the insurance *(i)*, or unless they be in partnership together *(k)*. So one part-owner, although he be the husband,

(d) *Valin* on the French Ordinance, tom. prem. 583. *Loccenius* de jure Marit. lib. 3. cap. 5. sect. 3. *Consolato*, cap. 54.

(e) *Molloy*, book 2. ch. 1. sect. 3.

(f) *Consolato*, cap. 54.

(g) *Wright* v. *Hunter*, 1 East, 20. *Bland ex parte*, 2 Rose 93.

(h) *Doo* v. *Chippenden*, Coram. *Kenyon* Ch. J. at *Westm.* Sit. p. H. T. 1790, and *Baldney and another* v. *Richie*, 1 Starkie 338. upon Pleas in Abatement.

(i) *Ogle & another* v. *Wrangham & others*, Coram *Kenyon* Ch. J. at *Guildhall*, Sit. p. H. T. 1790, and *French* v. *Backhouse*, 5 Burr. 2727, *and Bell* v. *Humphries & others*, 2 Starkie 345.

(k) *Hooper and another* v. *Lusby and others*. 4 Campbell. 67.

husband, cannot as such pledge the other to the expences of a law-suit *(l)*.

9. The interest of part-owners in the profit and loss of an adventure undertaken by their mutual consent, is not affected by the bankruptcy of one of them taking place after the commencement of the voyage, although he has not paid his full share of the out-fit. In such a case, if the other part-owners have in that character paid the expence of the out-fit, or made themselves responsible for it, they will have a right to deduct his share thereof from the portion of the profits of the voyage to be paid to his assignees. But in a case, where the out-fit had been conducted by a person appointed to manage the concern as purser or ship's husband, in pursuance of an agreement made by three others at the time of their becoming owners of the ship, and this person settled the accounts with them, and took from one of them, who afterwards became a bankrupt, promissory notes payable at a future day, for a part of his share of the expence; it was determined, that the assignees of the bankrupt were entitled to receive his full share of the profits, and that the ship's husband must take a dividend under the commission for the amount of the notes. In this case the husband had after his appointment acquired an interest in the ship by purchasing a part of the share of one of the other part-owners; but his right as a part-owner does not appear to have been insisted upon; and indeed he had made the disbursements, and managed the concern, not in the character of a part-owner but of an agent. After the bankruptcy had happened, the other two part-owners paid two-thirds of the amount of the bankrupt's notes to the ship's husband, and agreed with him to consider the bankrupt as interested only in the proportion which the money he had paid bore to the whole cost and out-fit. But this transaction was held not to affect

(l) Campbell & another appellants v. *Stein respondent.* 6 Dow. 135.

affect the question, nor alter the right or interest of the bankrupt, or of the assignees, upon whom they had devolved *(m)*.

10. In this case, which was sent from the Court of Chancery for determination at law, the question was made and decided with respect as well to the value of the bankrupt's share in the ship itself, as to the profits of the adventure, without distinction; and in the report of a case before Lord Chancellor *Hardwicke (n)* it is stated, that several persons having entered into a contract with one *T. Hall*, empowering him to build and fit out a ship at their joint expence, for the service of the *East India* Company, and he having died insolvent, without paying his portion of the expence, the others, who of course, remained answerable to the tradesmen for the whole, filed a bill against his administrator, praying that they might have a specific lien upon what should be due to him for his share to this extent; and that the administrator might not apply this as part of his general assets for the benefit

(m) Smith & others v. *De Silva & others*, Cowp. 469.

(n) Doddington v. *Hallett*, 1 Ves. 497. Upon reference to the register book of the Court, A. 1749. *folio* 625. it appears that the plaintiffs had covenanted with *T. Hall* the intestate, to take certain shares subscribed for by them, and which amounted together to *eleven sixteenths* of a ship to be built and fitted out under his directions for the service of the *East India* Company; that the ship was accordingly built and equipped, and was then at sea, and the builder had executed a general bill of sale of the whole to him, and he had not executed any bill of sale to them for their respective shares. The defendant by his answer admitted, that he was a trustee for the plaintiffs as to the *eleven sixteenths*, but submitted that they were not liable to the tradesmen, because the debts were contracted by the intestate, and further insisted that they had no specific lien on the shares, which, not being subscribed for, belonged to him. The Lord Chancellor decreed a reference to the Master to take the accounts, and directed allowance to be made to the plaintiffs for all such sums as they had paid or were liable to pay to the tradesmen or workmen for building, equipping, or victualling the ship, or for seamen's wages, and declared that if any balance should appear due to them, *they had a specific lien on the remaining shares for such balance*, and those shares were to be sold before the Master, and the money applied in the first place to the discharge of such balance.

benefit of all the creditors; and that his Lordship determined that they had a specific lien on his share for what they had paid or were liable to pay to the tradesmen for building and equipping the ship. The building and equipment had been managed by the deceased. In the course of his judgment, the Lord Chancellor, adverting to one part of the argument urged on the part of the administrator, is reported to have said "the defendant's counsel have been forced to resort to the case of "an assignment of a share for a valuable consideration: "which not being the case, I will not now determine, "because that is to be governed by the course of trade. "If it stood on the head of general equity, I should be "of opinion, that if such a purchaser had notice of the "partnership, he would be subject to it, and should not "doubt granting an injunction to that action of trover: "if he had not notice it is another thing, and a strong "case for that purchaser; because he would have gained "the legal interest: but if by the course of trade it is "otherwise, that will prevail and govern in this case, "and the Court will never extend a partnership of "this kind to affect purchasers beyond what the course "of trade will do, which is to govern in mercantile "matters."

This usage, or course of trade, I apprehend to be to charge the assignee or purchaser in account for the outfit and other expences incurred, in respect of the voyage, of which he is entitled, in consequence of his purchase, to share the profits, which can be only the voyage in prosecution at the time of the purchase, but not to carry back the charge as against him to the expence of any antecedent adventure, from which he can derive no profit.

The case of *Doddington* v. *Hallett*, has however been overruled by two decisions of Lord Chancellor *Eldon*, in a case where the managing owners being indebted to the other

other owners on balance of accounts for the freight and earnings of the ship, became bankrupts, and their assignees sold their shares; the other owners petitioned the Court of Chancery, that the sum thus due to them might be paid out of the proceeds of the sale: the case of *Doddington* v. *Hallett*, was quoted on behalf of the petitioners, but the Lord Chancellor, after great consideration, said, he must decide against that case, and dismissed the petition *(o)*. And soon afterwards a petition, presented under similar circumstances in another bankruptcy, was also dismissed *(p)*.

11. It is said to have been decided in the Court of Chancery, in a case where the majority of the part-owners had settled an account of the profits of a voyage, that the others were concluded thereby; and the Court would not entertain a suit by one of them to unravel the accounts *(q)*. I presume this to have been a settlement with the master.

12. The ordinary remedy for part-owners to obtain an adjustment of the ship's accounts among themselves is a suit in a Court of Equity. The only proceeding at the common law, generally applicable to their case, is an action of account, and this proceeding has long fallen into disuse. But in a case where several part-owners entered into a written agreement, whereby they and each and every of them did agree to and with the others and each and every of the others, that the ship should proceed on a certain voyage, and be under the exclusive management and control of one of the parties as husband thereof; and that, after the ship's return, a full account should be made out of the ship and her concerns, and the neat profits be divided

(o) Young exparte. 2 Vesey and Beames. 242.

(p) Harrison ex parte 2 Rose. 76.

(q) Robinson v. *Thompson*, 1 Vern. 465. The *Hanseatic* Ordinance of 1614 requires the master at his return home to summon all the part-owners to receive and pass his accounts, and imposes a fine upon those, who do not attend the *first* time in person or by agent; and at the *second* time authorizes the others to make a final settlement without them.

divided according to the proportions; it was held that each individual party to the agreement might maintain an action at law upon it against him, who had acted as the husband, for not making out an account and dividing the profits within a reasonable time after the ship's return *(r)*.

13. SECONDLY. As to the interest of part-owners with regard to strangers.

The several part-owners of a ship make in law but one owner; and in case of any injury done to their ship by the wrong or negligence of a stranger, they ought regularly to join in one action at law for the recovery of damages, which are afterwards to be divided among themselves according to their respective interests; for otherwise the party, who had committed the wrong, might be unnecessarily harrassed with the expence of several suits to obtain the same end, which might be as well effected in one. But this rule of law is made for the ease of the wrong-doer; and, therefore, the law requires that he should avail himself of it at the very beginning of the cause, by pleading in abatement of a suit brought by one part-owner, that there are others living, who ought to be parties to it. For if the defendant does not do this, the single part-owner will recover damages for the injury proportionate to his share in the ship, whether the nature of his interest is made to appear upon evidence at the trial, or is originally stated by himself in the allegation of his cause of complaint *(s)*. And if afterwards another part-owner sues for his own interest, the defendant can no longer avail himself of the objection, because the party to the first suit has no longer any matter of complaint *(t)*. In the case of the death of any part-owner after an injury received, the right

(r) Owston v. *Ogle*, 13 East, 538.

(s) Sands v. *Child & others*, Salk. 32. *Addison* v. *Overend*, 6 Ter. Rep. in K. B. 766. and see *Dockwray* v. *Dickenson*, Comb. 366.

(t) Scdgworth v. *Overend*, 7 Ter. Rep. in K. B. 279. In this case, the plaintiff was the only remaining part-owner: but the opinion delivered by Mr. Justice *Lawrence* is an authority for the text.

right of action survives in general to the surviving part-owners, who must afterwards pay to the personal representatives of the deceased the value of his share.

14. In the case, however, of an action for the freight of goods conveyed in a *general* ship, all the part-owners ought to join, or if they do not, the defendant may avail himself of the objection by evidence at the trial, and without plea in abatement; according to the general rule of law, and the distinction between contracts and wrongs *(u)*; unless, perhaps, some one should have received his own share, or have released his claim to it. The necessity of all the part-owners joining as plaintiffs in the suit in this case, is founded upon the consideration, that all of them are partners with respect to the concerns of the ship: and, upon this consideration, the present Lord Chancellor, in a case of bankruptcy, wherein it appeared that the owners of a ship, upon a settlement of accounts with the master, who had become a bankrupt, were indebted to him, and that, on the other hand, he also was indebted to some of them severally upon separate and distinct concerns, refused to allow the latter to set off their respective demands against the claim of his assignees for their shares of the general debt *(x)*.

15. On the other hand, if an action is to be brought against the part-owners upon any contract relating to the ship, although regularly such action should be brought against all jointly, yet if all are not sued, the defendants can only avail themselves of the objection by plea in abatement: and if they omit to plead such a plea, the plaintiff will recover his whole demand, and the defendants must afterwards call upon the others for contribution. Where the declaration assuming the form of an action *ex delicto*,

(u) There is a loose note in 3 Keeble, 444. *Stanley* v. *Ayles*, of a dictum of Chief Justice *Hale* at Nisi Prius, to the contrary of what is here advanced in the text; but the reporter adds, that the cause went off to a reference.

(x) *Ex parte Christie*, 10 Ves. jun. 105.

alleges a breach of duty and not a breach of promise, it has been much questioned, whether one part-owner who is sued alone, can avail himself of this plea, and also, whether if the action be brought against more persons than appear at the trial to be part-owners, the plaintiff can sustain his suit against those who appear to be so, or must fail altogether. In a case of a similar nature, the Court of King's Bench decided some time ago that the plea was not admissible *(y)*, but in another case the Court of Common Pleas afterwards held it to be admissible *(z)*, and following up its own judgment, decided in a third case, that the plaintiff who had failed in proving all the defendants to be part-owners must fail altogether *(a)*. A writ of error was brought on this latter judgment, which was argued before the twelve Judges, and it was understood that much difference of opinion existed among them, but the cause was decided on a different ground *(b)*. In a fourth case of a similar nature, wherein the declaration expressly alleged a bargain, and complained of a deceitful warranty in the nature of a wrong; the action being against two persons, and the plaintiff proving a sale by one alone; the Court of King's Bench held that he could not succeed against that one, but must wholly fail *(c)*. These are mere points of form, and it will be sufficient to have noticed them thus shortly, in order to put the professional reader upon his guard.

If a tradesman, who has repaired a ship, take from some of the part-owners sums equivalent to their shares, they still remain responsible for the residue, if not paid by the others, unless at the time of the payment the tradesman specially agree to discharge them from all further demand, upon some good consideration inducing him so to do, such as

(y) Govett v. *Radnidge*, 3 East, 52.
(z) Powell v. *Layton*, 2 New Rep. 365.
(a) Max v. *Roberts*, 2 New Rep. 454.
(b) Max v. *Roberts*, in Error, 12 East, 89.
(c) Weal v. *King*, 12 East, 452.

as payment before the expiration of the usual credit; or release them by deed *(d)*; which no prudent man will do without some very strong inducement. In this respect, the law of *England* differs from the Civil Law, which gives an action against any one part-owner upon a contract made by the master to the full extent of the demand, but in the case of contracts made by the part-owners themselves, holds each to be chargeable only in proportion to his own share of the ship *(e)*. By the law of *Holland*, the several part-owners are, in all cases, chargeable only according to their respective interests in the ship *(f)*.

(d) Teed & another v. *Baring & others*, before Lord *Ellenborough* Ch. J. at Guildhall, 1806. The receipt given by one of the plaintiffs was as follows: "Received 30th *May* "1804, from *Messrs. B. M. & Co.* "one-fourth owner of the ship "WILLIAM, *Captain James Thom-* "*son*, the sum of £.450, being the "amount of their proportion of "the said ship's repairs lately done "at *Plymouth*, we having settled "with the other owners respec- "tively, *John Teed & Co.*" *Messrs. Baring & Co.* knew that the proportions had been adjusted, but not paid. See *Fitch* v. *Sutton*, 5 East, 230.

(e) Dig. 14. t. 1. 25. and 14. 1, 2, 3, & 4.

(f) Vinnius in Peckium, p. 155.

PART THE SECOND.

OF THE PERSONS EMPLOYED IN THE NAVIGATION OF MERCHANT SHIPS.

CHAPTER THE FIRST.

OF THE QUALIFICATIONS OF THE MASTER AND MARINERS.

1. THE Master of a ship is the person entrusted with the care and management of it. His power and authority are so great, and the trust reposed in him is of so important a nature, that the greatest care and circumspection ought to be used by the owners in the choice and appointment of him. It appears by the language of the ancient sea-laws and ordinances, that the master was formerly in almost every instance a part-owner of the ship, and consequently interested in a two-fold character in the faithful discharge of his duty. At present, it frequently happens that he has no property in the ship. The law of some countries requires a previous examination of the person to be appointed to this important office, in order to ascertain his nautical experience and skill: in other countries, he is liable to be punished as a criminal, if, having undertaken the charge, he is found incompetent to the performance of it *(a)*. In this country the owners are left to

(a) See Cleirac on the first article of the laws of *Oleron*; *French* Ordinance, liv. 2. tit. 1. *Du Capitaine*, and *Valin* thereon. *Hanseatic* Ordinance of 1614. tit. 3. art. 1.

to their own discretion, as to the skill and honesty of the master; and although he is bound to make good any damage that may happen to the ship or cargo, by his negligence or unskilfulness, if he is of ability to do so, yet he cannot be punished as a criminal for mere incompetence.

2. At the publication of the former editions of this book there existed one excepted case, arising out of one of the humane provisions made by the *British* Legislature for the regulation of the *African* Slave Trade *(b)*, but this trade being now wholly prohibited to his Majesty's subjects, the exception need be no longer noticed.

3. The other persons employed in the ordinary navigation of a trading ship, fall under the general denomination of mariners and seamen.

4. For the employment of a *British* ship it is necessary that the master, and a certain proportion of the mariners, should in many cases be *British* subjects, from a very obvious principle of public policy, enforced by various provisions of the Legislature. So long ago as the reign of Queen *Elizabeth*, it was made unlawful to lade or carry any fish, victual, or other things in any bottom, whereof a stranger born was ship-master, from one part of the realm to another *(c)*. An ordinance made in the time of the usurpation required, in some particular cases, the master and mariners, or the most part of them, to be of the people of the commonwealth *(d)*. The celebrated Navigation Act, which passed immediately after the Restoration, required the master, and three-fourths of the mariners, to be subjects of the King, wherever it required a *trading* ship to be either *English* built or *English* owned *(e)*. And by a statute passed in the following year,

(b) 39 *Geo.* 3. *c.* 80. *s.* 23.

(c) 5 *Eliz. c.* 5. *s.* 8. under forfeiture of the *goods*. To which the ordinance of the 9th of *October* 1651, and the Navigation Act, add also the forfeiture of the *vessel*.

(d) Ordinance of 9th *October* 1651. Scobell's Acts.

(e) 12 *Car.* 2. *c.* 18. See Reeve's Law of Shipping and Navigation, p. 304, 305.

year, " the number of mariners was to be accounted " according to what they should have been during the " whole voyage *(f)*." These regulations, however, having been found inconvenient in time of war, several temporary statutes *(g)* allowed, during such periods, the employment of three-fourths foreign seamen: and the two first of those statutes conferred the privileges of *British* subjects upon foreign seamen after *two* years service in the time of war, either on board a ship of war, or a merchant or trading vessel.

5. This subject was further regulated by a statute passed in the thirty-fourth year of the reign of *Geo.* 3. as to *Great Britain(h)*; and by another statute passed in the forty-second of the same reign as to *Ireland(i)*. But that statute, and all others relating to the subject, having been repealed in the sixth year of the reign of his present Majesty, it is, by a statute of that year enacted, that no ship shall be admitted to be a *British* ship, unless duly registered and navigated as such, and that every *British* registered ship (so long as the registry of such ship shall be in force, or the certificate of such registry retained for the use of such ship), shall be navigated during the whole of every voyage (whether with a cargo or in ballast), in every part of the world, by a master who is a *British* subject, and by a crew whereof three-fourths at least are *British* seamen; and if such ship be employed in a coasting voyage from one part of the United Kingdom to another, or in a voyage between the United Kingdom, and the islands *Guernsey, Jersey, Alderney, Sark* or *Man*; or from one of the said islands to another of them, or be employed in fishing on the coasts of the United Kingdom, or any of the said islands, then the whole of the crew shall be *British* seamen *(k)*. And it is further enacted, that no person shall be qualified to be master of a *British* ship, or to be a *British* seaman, within

(f) 13 & 14 *Car.* 2. *c.* 11. *s.* 6.
(g) 6 *Anne, c.* 37; 13 *Geo.* 2. *c.* 3; 28 *Geo.* 2. *c.* 16; 19 *Geo.* 3. *c.* 14; 33 *Geo.* 3. *c.* 26; 43 *Geo.* 3. *c.* 64.
(h) 34 *Geo.* 3. *c.* 68.
(i) 42 *Geo.* 3. *c.* 61.
(k) 6 *Geo.* 4. *c.* 109. *s.* 12.

within the meaning of the Act, except natural born subjects of his Majesty, or persons naturalized by Act of Parliament, or made denizens, or who have become *British* subjects by virtue of conquest, or cession of some newly acquired country, and who shall have taken the oath of allegiance, or the oath of fidelity required by the treaty or capitulation; or persons who shall have served on board some of his Majesty's ships of war, in time of war, for the space of three years. The natives, however, of places within the limits of the *East India* Company's Charter, although under *British* dominion, are not, upon the ground of being such natives, to be deemed *British* seamen. It is provided, however, that a ship not required to be wholly navigated by *British* seamen, which shall be navigated by one *British* seaman for every twenty tons of her burthen, shall be deemed to be duly navigated, although the number of other seamen shall exceed one-fourth of the whole crew *(l)*. But it is provided, and further enacted, that his Majesty may, by his royal proclamation during war, declare, that foreigners, having served two years on board any of his ships of war, in the time of such war, shall be *British* seamen, within the meaning of the Act *(m)*. And it is further enacted, that no *British* registered ship shall be suffered to depart any port in the United Kingdom, or any *British* possession in any part of the world (whether with a cargo or in ballast), unless duly navigated; with a proviso, that *British* ships trading between places in *America* may be navigated by *British* negroes, and ships trading eastward of the *Cape of Good Hope*, within the limits of the *East India* Company's charter by Lascars, or other natives of countries within those limits *(n)*. It is further enacted, that if any *British* registered ship shall at any time have, as part of the crew, in any part of the world, any foreign seamen not allowed by law, the master or owners thereof shall, for every such amen,

(l) 6 *Geo.* 4. *c.* 109. *s.* 16.
(m) Ibid. *s.* 17.
(n) Ibid. *s.* 18. See also as to the employment of Lascars, and the navigation of ships in *India*, 4 *Geo.* 4. *c.* 80. *s.* 20 to 28.

seaman, forfeit £.10; but if a due proportion of *British* seamen cannot be procured in any foreign port, or any place within the limits of the *East India* Company's charter, for the navigation of any *British* ship; or if such proportion be destroyed during the voyage by any unavoidable circumstance, and the master shall produce a certificate of such facts, under the hand of any *British* consul, or of two *British* merchants, if there be no consul at the place, where such facts can be ascertained, or from the *British* governor of any place within the limits of the *East India* Company's charter; or in the want of such certificate, shall make proof of the truth of such facts, to the satisfaction of the collector and comptroller of the customs of any *British* port, or of any person authorized in any other part of the world, to inquire into the navigation of such ship, the same shall be deemed to be duly navigated *(o)*.

And it is further enacted, that if his Majesty shall *at any time*, by his royal proclamation, declare that the proportion of *British* seamen necessary to the due navigation of *British* ships, shall be less than the proportion required by this Act, every *British* ship navigated with the proportion of *British* seamen, required by such proclamation, shall be deemed to be duly navigated, so long as such proclamation shall remain in force *(p)*.

And by a clause in the Register Act, introduced on account of some recent combinations of seamen, it is enacted, that for two years after the passing of that Act (viz. 5th *July* 1825), the Privy Council may, as often as it may appear expedient to them, make an order on behalf of the master or owners of any *British* ship, permitting such ship to proceed on her voyage with a less number of *British* seamen than is required by the Navigation Act *(q)*.

(o) 6 *Geo.* 4. *c.* 109. *s.* 19.
(p) Ibid. *s.* 20.
(q) 6 *Geo.* 4. *c.* 110. *s.* 8.

CHAPTER THE SECOND.

OF THE AUTHORITY OF THE MASTER WITH REGARD TO THE EMPLOYMENT OF THE SHIP.

1. A TRADING Ship is employed by virtue of two distinct species of contract: *First*, The contract by which an entire ship, or at least the principal part thereof, is let for a determined voyage to one or more places: this is usually done by a written instrument, signed and sealed, and called a *Charter-party*. *Secondly*, The contract by which the master or owners of a ship destined on a particular voyage, engage separately with a number of persons unconnected with each other, to convey their respective goods to the place of the ship's destination. A ship employed in this manner is usually called a *general* ship.

The nature of each of these contracts will form the subject of particular discussion hereafter *(a)*. In the present chapter it is proposed to consider only the power of the master to bind the owner of the ship by these engagements.

2. The owners rarely navigate a trading ship by themselves; the conduct and management of it are almost always entrusted to the master, whether he has, or has not, a partial property in it. In the latter case he is the confidential servant or agent of the owners at large; in the former, of his copartners. In either case by the law of *England*, and in conformity to the rules and maxims of that law in analogous cases, the owners are bound to the

(a) Part 3. chap. 1 and 2.

the performance of every lawful contract made by him relative to the usual employment of the ship. They are bound to this performance by reason of their employment of the ship, and of the profit derived by them from that employment *(b)*. One part-owner, who dissents from a particular voyage in the manner mentioned in a preceding chapter *(c)* is not bound, because he does not employ the ship on that voyage, nor derive any profit from it *(d)*. The course of the usual employment of the ship is evidence of authority given by the owners to the master, to make for them and on their behalf a contract relating to such employment; and consequently a contract so made by him is esteemed in law to have been made by them. It *(e)* is true that the master also is answerable for his own contract; for in favour of commerce the law will not *compel* the merchant to seek after the owners and sue them, although it gives him the power to do so; but leaves him a two-fold remedy against the one or the other. But in pursuing this remedy, care must be taken to describe the defendant according to his real character. For in an action at law *(f)*, brought against a person as master, at the trial whereof it appeared upon the proof that the defendant was not master but owner, the plaintiff failed in his suit.

3. This rule of the law of *England* agrees with the law of other commercial nations. When the Romans began to engage in commerce *(g)*, a new species of action under a particular name appears to have been introduced, to

(b) See Molloy, book 2. chap. 2. sect. 14.

(c) Part 1. ch. 3. sect. 4. p. 70.

(d) By *Holt*, Ch. Just. in *Boson* v. *Sandford*, Carth. 63.

(e) *Morse* v. *Slue* or *Sluce*, 1 Vent. 190. 238.

(f) *Richwood* v. *Footmer*, coram Kenyon, Ch. J. Sit. p. Hil. T. 1790.

(g) Dig. 4. 9. *Nautæ, caupones, stabularii, ut receptæ restituant.* Dig. 14. 1. *De Exercitoria actione*, Molloy in his Treatise *De Jur. Marit. et naval.* book 2. ch. 2. sect. 2. appears to have mistaken the character of the *Exercitor navis* of the civil law, and to have supposed him to be the *master* of the ship; whereas in truth he is the *employer* of the ship, and consequently must be the absolute, or at least the temporary owner. "*Magistrum*

to ascertain and enforce this responsibility of the owners for the acts of their servants; and by the *Prætorian Edict* the owners, or (to render the Latin word more nearly) the *employers*, of the ship are made responsible for the faults of the mariners and master, and for the contracts also of the master; but not for the contracts of the mariners, because the mariners are not appointed for the purpose of conducting the business of the ship, but only of labouring in its navigation under the orders of the master. And with regard to the contracts of the master, a distinction is taken by the commentators on the Edict between such as the owners have authorized him to make, and such as they have not authorized him to make; but in general it appears that they were answerable for all acts, of which his character and situation afforded the presumption of authority, even if he contravened the orders received from them; unless the party with whom he contracted, were acquainted with the orders, by which his authority was restrained. Thus it is expressly laid down, that if the master appointed another person to supply his place, contrary to the positive orders of the owners, the owners were responsible for the conduct of the master so appointed even against their will. On the other hand, if a ship were built for the purpose of conveying passengers only, or

" *Magistrum* navis accipere debe-
" mus, cui totius navis cura man-
" data est. Magistrum autem
" accipimus non solum, quem ex-
" ercitor præposuit, sed et eum,
" quem magister. *Exercitorem* au-
" tem eum dicimus, ad quem ob-
" ventiones et reditus omnes per-
" veniunt, sive is Dominus sit, sive
" a domino navem per aversionem
" conduxit, vel ad tempus, vel in
" perpetuum." Dig. 14. 1. 1. And Roccus, Not. 3. speaks to the same effect of the *Magister*. This author usually calls the owner *dominus navis*, but he often speaks of him as the person *qui exercet navem*. Again, in the Dig. 4. 9. 1. 2. we find the following commentary on the *Prætorian Edict*. The terms of the edict are, " Nautæ, caupones, sta-
" bularii, quod cujusque salvum
" fore receperint, nisi restituant, in
" eos judicium dabo." Upon which Ulpian writes thus, " Ait Prætor
" *Nautæ*; *Nautam* accipere debe-
" mus, eum qui navem exercet,
" quamvis nautæ appellantur om-
" nes, qui navis navigandæ causa
" in nave sint, sed de *exercitore*
" solummodo Prætor sentit, nec
" enim debet per remigem, aut
" mesonautam obligari, sed per se,
" vel per navis *magistrum*."

or merchandize only, and employed in that particular trade, the owners were not answerable for a contract made by the master to employ the ship for a different purpose in a different trade. This agrees with the terms of the rule as above laid down, because such a contract does not relate to the usual employment of the ship.

4. The modern nations of *Europe* appear to have adopted nearly the same rules, founded on the same principle *(h)*, with certain limitations, that will be noticed hereafter. Indeed it often happens that no contract can be made with the owners personally; as when the ship is in a place distant from their residence. Even when the ship is at the place of their residence, and is intended to be employed as a *general* ship, it rarely happens in practice that the owners interfere with the receipt of the cargo; and without doubt they are by our law bound by every contract made by the master relative to the usual employment of *such* a ship.

5. A charter-party, made by the master in his own name, furnishes no direct action against the owners, grounded upon the instrument itself, by the law of *England:* but when this contract is made by the master in a foreign port in the usual course of the ship's employment, and under circumstances, which do not afford evidence of fraud, or when it is made by him at the ship's home under circumstances, which afford evidence of the assent of the owners; the ship and freight, and therefore indirectly the owners also, to the amount of the value of the ship and freight, are by the marine law bound to the performance *(i)*. " *The ship is bound to the merchandize,* " *and*

(h) Roccus. Not. 11 to 18 inclusive, and Not. 26, 27, 28. Not. 49. *ad finem*, and Not. 65. Guidon, ch. 18. art. 4. and Cleirac's Comment thereon. *French* Ordinance, liv 2. tit. 8. *Des Proprietaires de navires*, art. 2. and the Commentary of Valin thereon. Pothier, Charte-parte, sect. 2. art. 3. Welwood's Sea Laws, tit. 15. See as to the limitations, part 3. ch. 5. of this Treatise.

(i) An instance of a sentence in *Spain* against master and *ship* for barratry and deviation by the master;

"*and the merchandize to the ship,*" are the words of *Cleirac (k).* By the *French* Ordinance *(l)* it is declared, that the ship, with its furniture and freight, and the cargo, are respectively bound to the stipulations of the charter-party. And *Valin* in his Commentary says, the rule is the same whether the affreightment be made by the owner, or the master alone, even at the place of the owner's abode, if the owner does not disavow it.

By the *French* Ordinance *(m)* the master is bound to follow the advice of the owners, when he freights the ship at the place of their abode. The Ordinance of the *Hanse-Towns,* art. 58. is to the same effect. *Valin* in his Commentary on the *French* Ordinance, retains the necessity of this consent of the owners to the presence of all or the greater part of the owners, or of one appointed to act for all; and says, that if in such a case the master make a contract without their consent, the owners may annul it, and make another by their own authority. But the master himself will be answerable for the non-performance of it. This doctrine is also adopted by his countryman *Pothier (n).*

It is true indeed that this principle of the maritime law, by which the ship itself in specie is considered as a security to the merchant, who lades goods on board of it, cannot be carried into effect in this country, because the Court of Admiralty, in which alone proceedings can be carried on against the ship, has no jurisdiction in such a case. But I apprehend the owners may be made responsible, either by a special action on the case at the Common Law, or by a suit in Equity, for the faithful performance of

master, who had let the ship by a charter-party, is mentioned in an anonymous case in 2 Ch. ca. 238.

(k) Les Us & Coutumes de la mer, p. 72.

(l) French Ordinance, liv. 3. tit. 1; *Des Chartes-parties,* art. 11; and see liv. 1. tit. 14. *De la saisie des vaisseaux,* art. 16.

(m) Liv. 3. tit. 1. *Des Chartes-parties,* art. 2.

(n) Pothier, Charte-partie. num. 48.

of the stipulations of a charter-party made by the master under the circumstances before mentioned.

6. The general rule before laid down, *viz.* That the owners are bound by every lawful contract made by the master relative to the usual employment of the ship, is proved, as to the case of a *general* ship, by the following judicial authorities.

In the case of *Boson* v. *Sandford & others (o)*, which was an action brought against some of the part-owners of a ship employed in the coasting trade between *Exeter* and *London*, to recover the value of goods lost, which had been delivered to the master at *Exeter* without the knowledge of the owners, to be conveyed from thence to *London*; the Court held that the owners were answerable for a loss under such circumstances, but decided the case against the plaintiff, because the action was brought against some only, and not against all the part-owners.

In the case of *Boucher* v. *Lawson (p)*, which was an action brought against the owner to recover the value of *Portugal* coin delivered to the master at *Lisbon*, to be conveyed to *London*, and of which by the usage of that particular trade the master was to receive the freight to his own use, and which the master had embezzled; the Court held that, if it had appeared that the ship was employed in carrying goods for hire, the owner would have been answerable for this loss; for although the exportation of coin was prohibited by the laws of *Portugal*, yet the importation of it into this country was allowed by our laws, and so the trade was lawful here; and it was of no consequence, whether the master was rewarded for his services by wages paid by the owner, or by receiving part of the earnings of the ship: but as it did not appear that the

(o) *Boson* v. *Sandford & others*, Carth. 58. 3 Lev. 258. 3 Mod. 321. 1 Show. 29. 101.

Note. It would now be held, that as the defendants had not pleaded in *abatement*, they could not avail themselves of the ground, upon which this case was decided against the plaintiff. See part 1. ch. 3. sect. 13. page 82.

(p) Rep. temp. *Hardwicke*, p. 85.

the ship was employed in carrying goods for hire, but for any thing that appeared in the case, the ship might have been sent to *Lisbon* for a special purpose, and if so (as the Chief Justice said) no man could say that the master, by taking in goods of his own head, could make the owners liable: it was decided that the plaintiff should not recover.

The facts of the case of *Ellis* v. *Turner & another (q)*, which was an action brought against the owners for the value of goods damaged by the sinking of their vessel, were as follows: The vessel was employed in carrying goods from *Hull* to *Stockwith*, and to *Gainsborough*, which is a little further than *Stockwith*, but the freight was the same for conveyance to either place. On former voyages the goods destined to *Stockwith* had sometimes been delivered there on the way to *Gainsborough*, and at other times carried forward to *Gainsborough*, and delivered at *Stockwith*, on the return to *Hull*. The goods in question were delivered to the master on his express undertaking to deliver them at *Stockwith* on his way to *Gainsborough*. This particular undertaking was made by the master without the privity of the defendants, but he had a general authority from them to receive and convey goods for the customary freight from *Hull* to *Stockwith* and *Gainsborough*. The defendants had previously given public notice, with which the plaintiff's agent who shipped the goods, was acquainted, that they would not be answerable for any loss or damage that might happen to any cargo, unless occasioned by the want of ordinary care and diligence in the master and crew, in which case they would pay *ten per cent* upon the loss, provided such payment did not exceed the value of the vessel, but that they were willing to insure against all accidents upon receiving extra freight in proportion to the value. No agreement had been made for the payment of extra-freight for the goods in

(q) 8 Ter. Rep. in K. B. p. 531.

in question. The vessel took in other goods to be delivered at *Stockwith* in the present voyage, and arrived safely at that place. The master delivered some of the other goods there, and was requested by the wharfinger to deliver all, that were destined for that place, but without the knowledge of the defendants refused to deliver the others, alledging that they were stowed below the goods destined to *Gainsborough*. On the way from *Stockwith* to *Gainsborough* the vessel sunk, without any want of ordinary care in the master or crew, and the goods in question were damaged. The Court held that the plaintiff should recover the amount of his loss. And Lord *Kenyon* said, "As the vessel reached *Stockwith* in safety, "and might have delivered the goods there, I think this "action may be maintained. For though the loss hap-"pened in consequence of the misconduct of the de-"fendants servant, the superiors (the defendants) are "answerable for it in this action. The defendants are "responsible for the acts of their servant in those things, "that respect his duty under them, though they are not "answerable for his conduct in those things, that do not "respect his duty to them; as if he were to commit "an assault upon a third person in the course of his "voyage."

7. It may be observed, that in each of the above cases the contract upon which the action was brought, was made by the master without the particular knowledge of the owners. In the first, it was made in the course of the usual employment of the vessel, and therefore the Court held the owners to be bound to the performance as a general rule, although they thought the particular suit improperly brought. In the second, the contract was not made, or at least did not appear to have been made, in the course of the usual employment of the ship, and therefore the owner was not bound by it. In the last, the contract was made in the course of the

usual employment of the ship, and therefore it was considered to be a contract made in substance by the owners.

8. From the decision of the last of the above cases, it seems also to follow, that if the master make a particular engagement or warranty, relating to the conveyance of merchandize according to the usual employment of the ship, the owners will be bound by such engagement or warranty, although made without their knowledge. And the law was so laid down by Lord *Kenyon* in his directions to a jury upon the trial of an action *(r)* brought by a merchant against the owners of a ship on a warranty, that the ship should sail with convoy from the place of rendezvous, which had not been complied with. A broker in *London* had been employed by the master to advertise the ship as a general ship, bound to *Hamburgh*; and in the printed papers the broker had inserted a clause purporting that the ship was to sail with convoy from the place of rendezvous. There was no evidence given either of the assent, or dissent, of the defendants (the owners) to this warranty, or of their knowledge of it. But there was contradictory evidence upon a question made at the trial, whether the master had forbidden the broker to insert this clause. His lordship however told the jury, that he thought that point quite immaterial, for as the broker was authorized to advertise the ship, the owners were answerable to strangers for his acts, although he had exceeded his authority; and must seek their remedy against him. And the plaintiff succeeded in the cause.

9. From this rule of law, by which the owners are bound to the performance of these contracts, it follows as a corollary, that they must answer for a breach of them, although committed by the master or mariners against their will, and without their personal fault.

(r) Ringuist v. *Ditchell*, Guild-hall Sit. p. Mich. Ter. 40 *Geo.* 3.

10. But if the owners themselves have made a special contract for the employment of their ship, the master cannot, by the general and implied authority of his character as master only, annul such a contract, and substitute another for it with the other contracting party *(s)*.

It seems also, that the master of a trading ship, entrusted to his command for the purpose of procuring goods on freight, cannot bind the owners by an engagement to carry goods free of freight. Such an engagement certainly will not be within the scope of his authority as above described *(t)*.

11. The great responsibility, which the laws of commercial nations cast upon the owners for the acts of the master in this and other cases, has appeared to many persons, at first view, to be a great hardship; but laying aside all consideration of the opportunities of fraud and collusion, which would otherwise be afforded, it should always be remembered, that the master is elected and appointed by the owners; and by their appointment of him to a place of trust and confidence, they hold him forth to the public as a person worthy of trust and confidence; and if the merchants, whom he deceives, could not have redress against those who appointed him, they would often have just reason to complain, that they had sustained an irreparable injury through the negligence or mistake of the owners; as the master is seldom of ability to make good a loss of any considerable amount.

(s) By Lord *Ellenborough*, Ch. J. in *Burgon* v. *Sharpe & others*. 2 Campbell, 529.

(t) *Dewell* v. *Maxon & another*, 1 Taunton, 391.

CHAPTER THE THIRD.

OF THE AUTHORITY OF THE MASTER WITH REGARD TO REPAIRS AND OTHER NECESSARIES FURNISHED TO THE SHIP.

1. THE Obligation, to which the master of a ship may subject the owners, to pay the charge of repairing their ship, and the price of stores and provisions supplied for the use of it, or to repay money advanced for those purposes, is sometimes *direct*, furnishing an action against themselves personally; sometimes *indirect*, to be prosecuted by a suit against the ship. It is proposed in the present chapter to consider it distinctly under each of these forms.

2. It should be premised however that the master is always personally bound by a contract of this kind made by himself, unless he takes care by express terms to confine the credit to his owners only *(a)*. But such a contract made by the owners themselves *(b)*, or under circumstances, which show that credit was given to them alone *(c)*, gives the creditor no right of action against the master.

It should be observed also, that the owners here spoken of are not in all cases the persons in whom the absolute legal title of the ship may be vested, but rather those from whom the master derives his authority, and whose agent he is, on the particular occasion. Some remarks have been offered on this head in the first chapter of this Treatise.

(a) Rich v. *Coe*, Cowp. 636.
(b) Farmer v. *Davis*, 1 Ter.Rep. in K. B. 108.
(c) Hoskins v. *Slayton*, before *Lee*, J. at Guildhall, Cases temp. *Hardwicke*, 376.

tise *(d)*. The owners of a packet employed by the Government to carry the mail, are answerable for stores ordered by the captain, although he is nominated by the post-master general *(e)*.

3. And FIRST, as to the *personal* obligation of the owners.

I have in the preceding chapter stated the nature and grounds of the owners obligation, in the case of contracts made by the master for the carriage of merchandize in their ship. Their obligation in the case of his contracts now under consideration, is of the same nature, and depends upon the same principles; for, as those relate to the employment of the ship, so these relate to the means of employing it; and accordingly we find the obligation of the owners in both cases laid down in the very same parts of the civil law *(f)*, and treated under one head. And as the master in general appears to all the world as the agent of the owners in matters relating to the usual employment of the ship, so does he also in matters relating to the means of employing the ship: the business of fitting out, victualling, and manning the ship, being left wholly to his management in places where the owners do not reside, and have no established agent; and frequently also even in the place of their own residence. His character and situation furnish presumptive evidence of authority from the owners to act for them in these cases, liable indeed to be rebutted by proof that they, or some other person for them, managed the concern in any particular instance, and that this fact was actually known to a particular creditor, or was of such general notoriety, that he cannot be supposed to be, because he ought not to have

(d) Ante, page 18.
(e) *Stokes* v. *Carne & others*, 2 Campbell, 339.
(f) Dig. *De Exercitoria actione*, 14. 1. 1. 8. & 9. and 14. 1. 7.

have been, ignorant of it, or that they were by the terms of the contract expressly excluded *(g)*.

It is scarcely necessary to remark that the master's contract with the mariners employed in the navigation of the ship, is one of those which are obligatory upon the owner; but it is proper to mention, because the point has once been contested, that his contract with an occasional pilot is of the same nature *(h)*.

3. In order however to constitute a demand against the owners, it is necessary that the supplies furnished by the master's order should be reasonably fit and proper for the occasion, or that money advanced to him for the purchase of them should at the time appear to be wanting for that purpose. The contrary in either case would furnish a strong presumption of fraud and collusion on the part of the creditor. The proper mode of ascertaining what is necessary, is to ask what a prudent owner would himself have done, had he been present *(i)*.

4. It is true indeed that Lord Chancellor *Hardwicke* once entertained a doubt as to the effect of contracts of this kind made by the master under the orders of a managing owner, and directed a trial at law, to determine whether or not the other owners were chargeable *(k)*. But in an earlier case *(l)* where the master of a ship, having bought provisions and stores upon credit, failed, and the tradesmen sued the part-owners in the Court of Chancery for the price; the Court *(m)*, considering the master as a servant to the owners, decreed that they should pay in proportion to their shares, and said, that "*if the owners paid "their servant, yet if he paid not the creditors, they must "stand liable (n).*" And in an action at law *(o)*, the rule

(g) Bland exparte, 2 Rose, 91.
(h) The NELSON, *Main*, 6 Rob. A. R. 227.
(i) See *Webster & another* v. *Seekamp & others*, 4 B. & A. 352.
(k) Buxton v. *Snee*, 1 Vesey, 154. A. D. 1748.
(l) Speering & others, v. *Degrave & others*, 2 Vern. 643. A. D. 1709.
(m) Lord Chancellor *Cowper*, I presume.
(n) See also *Stewart* v. *Hall & others*, 2 Dow. 29.
(o) Garnam v. *Bennet*, 2 Stra. 816.

rule was said to be, that *primâ facie* the repairer of a ship has his election to sue the master, who employs him, or the owners; but if he undertakes it on a special promise from either, the other is discharged.

5. In the cases before-mentioned the facts appear to have happened in *England*. In a case *(p)* tried before Lord *Kenyon* at Guildhall, where the master of the ship had borrowed money *abroad* for the use of the ship, his lordship held that the lender might recover against the owners the money laid out upon the ship; and this opinion was afterwards confirmed by the Court of King's Bench. It was proved at the trial that the master could not obtain money on the security of the ship alone, which, in the event that happened, would have been more beneficial to the owners because the ship perished on the voyage home. In such an event the *Consolato del Mare* expressly declares the owners not to be personally responsible *(q)*.

6. Another

(p) Evans v. *Williams*. Sit. p. Trin. T. 28 *Geo.* 3. A new trial was moved for in the following Michaelmas Term, and upon argument refused.

In *France*, the master of a ship was formerly held to possess this power of charging the person of his owners for money borrowed for the necessities of the ship in the course of a voyage. See Valin on the *French Ordinance*, liv. 2. tit. 1. *Du Capitaine*. art. 19. tom. i. p. 443. But Emerigon, tom. ii. p. 458, &c. cites four decisions of the courts of his country, (two of which were reversals of judgments pronounced in the Admiralty of *Rochelle*), by which the owners were declared not to be personally responsible, the ship having perished on the voyage; but in each of those cases the master was held liable to pay the debt; and in the last of them it was determined that he had a right to be repaid out of the proceeds of goods belonging to the owners, which had been landed in a former part of the voyage, and they were ordered to account to him for the value of them. The learned author speaks of these decisions as an alteration of the law of his country, and cautions masters of ships against drawing bills upon their owners in such cases. The caution should also be extended to those, who may be in a situation to advance money on such occasions, and who should understand that they cannot by the law of *France* have the personal security of the owners of the ship. The new doctrine appears to be founded on a new construction of that article of the ordinance, which declares that the owners shall be responsible for the acts of the master, but shall be discharged on abandoning the ship and freight. Liv. 2. tit. 8. Des Proprietaires, art. 2.

(q) Cap. 240.

6. Another case *(r)*, in which a claim was made upon the owner for money advanced to the master abroad in the course of a foreign voyage, underwent a great deal of discussion, and seems worthy of particular notice. Sir *Humphrey Jervis*, who lived at *Dublin*, being sole owner of a ship lying at *Bristol* under the command of *S. Symons*, and originally intended to be freighted from thence to *Ireland*, being disappointed in that voyage, and informed by *Symons* that a freight could be got for the *West Indies*, if he approved of it, wrote to *Symons* to accept such freight, and to take up as much money upon *bottomry*, as would fit out the ship, and provide a stock for port-charges. *Symons* thereupon entered into a charter-party with *Cary*, a merchant at *Bristol* for the hire of the ship for a voyage to the *West Indies* and back to *Bristol*; and by the terms of the charter-party the owner was to pay the seamen's wages, and provide all necessaries for the ship; but *Symons*, not being in cash for this purpose, borrowed £. 200. upon *bottomry*, of *Cary*, and also obtained a letter of credit from him to his correspondents in *Jamaica*, for whatever money he might further want, either to repair the ship, or furnish her with provisions, or to pay the seamen's wages. The ship proceeded to *Jamaica*, and there *Symons* the master, by virtue of *Cary*'s letter of credit, took up several sums amounting to £. 789. On the return from *Jamaica* to *Bristol* the ship was lost. Sir *Humphrey Jervis* refused to pay *Cary* the £. 789, and *Cary* thereupon sued him for the recovery of it in the Court of Chancery in *Ireland*, alledging that the money was expended in repairs and other necessary purposes; and, he dying during the suit, the proceedings were revived and carried on against his administrators. The Lord Chancellor of *Ireland*, assisted by one of the Chief Justices and another Judge, at first decreed that *Cary* should recover so much of the money

(r) Cary v. *White*, 1 Bro. Par. Cases 284. A. D. 1710.

money claimed, as upon a trial at law should be found to have been thus expended; but the cause was afterwards re-heard, and the Court declared that *Cary* was not entitled to any relief. Upon this *Cary* appealed to the *British* House of Lords, before whom the cause was heard. On behalf of *Cary* it was argued, "That at common law whatever is done by a servant, which is for "the benefit of his master, and within the *trust* and *duty* "of his place, binds the master, as if done by himself; "and in a voyage, the master of a ship is the owner's "servant, whose duty requires him to provide necessaries "for the ship, it being the owner's interest that they "should be provided; so that whatever the master "necessarily takes up and employs for that purpose, the "owner is bound to pay. And that by the custom of "merchants, if the master be supplied with necessaries "for the ship by the order or credit of any freighter, the "owner is liable to pay such freighter, and on that ground "it is customary for freighters to furnish masters of the "ships they take to freight, with letters of credit for "whatever money they may happen to want, for the "necessary service of the ship."

On the other side it was contended, "That it would be "of most dangerous consequence for the master of a ship "to charge the person or estate of his owner with what "money he should take up on pretence of providing for "the ship, without an express power or authority for "that purpose; for that the law of merchants had never "carried it further than to invest the master with a power "of mortgaging, or charging the ship or cargo with such "money. That in the present case the money could not "be laid out by the appellant or his factors, upon the credit "of Sir *Humphrey Jervis*, not only because he was a "total stranger to them, but principally because he had "for two years before failed in his circumstances, and "lost his credit; nor was it even pretended that Sir "*Humphrey* ever gave any authority to the master to

"take

" take up money otherwise than on *bottomry*. That if " Sir *Humphrey*'s person or estate was in all events " liable to make good this £.789 besides the £.200 " advanced on the *bottomry bond*, and which, in case " the ship had returned safe to *Bristol*, he would have " been answerable for, he must of necessity have been " a very great loser, as the ship cost at first but £.700, " and her freight in that event would not have brought " above £.600; and therefore, if Sir *Humphrey* himself " had been at *Jamaica*, he never would have consented " to take up money for preserving that, which would " have been so much to his loss. And that the appel- " lant's interest in the ship, by having £.200 on *bot-* " *tomry*, at a large interest to be paid on her return, " was much greater than Sir *Humphrey*'s, and therefore " whatever money was laid out in *Jamaica*, ought to be " considered as laid out on the account of the appellant, " but yet to be discounted out of the ship and freight, " so far as it would extend, on its return." The House of Lords thought the owner personally responsible, if the allegations of *Cary*, as to the necessity of the expenditure, were true; and directed a trial by jury in the Court of Common Pleas in *Ireland*, to ascertain whether any, and what sums of money, were *necessarily* laid out by, or by the order of *Cary*, for the payment of seamen's wages, provisions, or otherwise for the *necessary repairs and use of the ship during the voyage*, and decreed those sums to to be paid to *Cary*, and directed the Lord Chancellor of *Ireland* to order the necessary steps for the trial of the cause. The cause *(s)* was accordingly tried at the bar of the court of Common Pleas in *Ireland*, and the jury declared by their verdict, that nothing had been *necessarily* expended

(s) The subsequent proceedings are not mentioned by Brown. This account of them is taken from the printed cases delivered to the House of Lords, and the Journals of the House, 1st June 1717. The account of the evidence given at the trials contains nothing of general interest.

expended for these purposes by, or by the order of *Cary*. *Cary* applied to the Lord Chancellor, who ordered a second trial, and the cause was again tried at the bar of the Court of Common Pleas in *Ireland*, before another jury, who gave the same verdict, and the Lord Chancellor thereupon dismissed *Cary*'s suit with costs from the time of the judgment of the House of Lords. Upon this *Cary* again appealed to the House of Lords; but no person appearing before the House to support his appeal at the day appointed, the House dismissed it with costs.

7. This case while it establishes the principle of the personal responsibility of the owners, shews also that the creditor is required to prove the actual existence of the necessity of those things, which give rise to his demand. The authority of the master is to provide *necessaries*; if therefore a person trusts him for a thing not necessary, he trusts him for that, which it is not within the scope of his authority to provide: and consequently has no right to call upon his principal for payment. In the words of Lord *Ellenborough*, "The money supplied must "not be understood of an indefinite supply of cash, which "the master may dissipate, but only such as is warranted "by the exigency of the case, as for the payment of duties "or other necessary purposes *(t)*."

8. From what has been said, it follows, that if the master expend money of his own for these purposes, he has a right to call upon the owners to repay him *(u)*.

9. In an action against the owner for money advanced *in England* to the master, the following circumstances appeared on the trial. The ship, after an absence of four years and a half, during which she had been engaged in his Majesty's transport service, was in the port of Portsmouth,

(t) Rucher v. *Busher*: 1 Starkie, 27. *See* also *Palmer & others* v. *Gooch*, 2 Starkie, 428.

(u) Roccus, Not 34, 35.

mouth, upon her release from quarantine. Having received orders from the transport board to proceed to Deptford, the master borrowed the money in question to pay seamen's wages, Portsmouth being a port of discharge, and to pay tradesmen's bills for articles supplied for the use of the ship there. On the trial the plaintiff was nonsuited, but finally the Court of Exchequer set aside the nonsuit, and ordered a verdict to be entered for the plaintiff, for such sum as should, on a reference, be found due, for the seamen's wages *(x)*.

10. SECONDLY, as to charges upon the *ship in specie*.

Every man, who had repaired, or fitted out a ship, or lent money to be employed in those services, had by the Law of *Rome(y)*, and still possesses in those nations which have adopted the Civil Law as the basis of their jurisprudence, a privilege, or right of payment in preference to other creditors, upon the value of the ship itself, without any instrument of hypothecation, or any express contract, or agreement, subjecting the ship to such a claim *(z)*. This privilege exists in *France* not only while the ship remains in the possession of the owner, but even after a sale to a third person, for some period of time *(a)*. Lord *Mansfield* is reported to have said generally in a case, depending for judgment in the Court of King's Bench, that a person, who supplies a ship with necessaries, has not only the personal security of

(x) Robinson v. *Lyall.* 7 Price, 592.

(y) Dig. 42. 5. 26. "Qui in navem extruendam vel instruendam, credidit, vel etiam emendam, privilegium habet." And id. l. 34. "Quod quis navis fabricandæ, vel emendæ, vel armandæ, vel instruendæ, causâ, vel quoquo modo, crediderit, vel ob navem venditam petat, habet privilegium post fiscum." See also Dig. 20. 4. 5. and 6. Novell: 97. c. 3. Domatt's Civil Law, book 3. tit. 1. sect. 5. and Vinnius in Peckium, p. 99. & 233.

(z) See particular regulations on this subject, in the *French Ordinance*, liv. 1. tit. 14. *De la saisie et vente des vaisseaux.*

(a) It seems to be a year. *French Ordin.* liv. 1. tit. 12. *des prescriptions, &c.* art. 3.

of the master and owners, but also the security of the specific ship *(b)*. But in a recent case to which I have more than once had occasion to refer, Lord *Kenyon*, alluding to two cases that will be presently mentioned, expressed a doubt whether the doctrine of Lord *Mansfield* on this subject was not too generally laid down *(c)*; and upon the view of the decisions, which I am about to quote, one of which was pronounced by Lord *Mansfield* himself, it appears that the Law of *England* has not adopted this rule of the Civil Law with regard to repairs and necessaries furnished here in *England*. A shipwright indeed, who has taken a ship into his own possession to repair it, may not be bound to part with the possession, until he is paid for the repairs, any more than a tailor, smith, or other artificer, in regard to the object of his particular trade *(d)*, unless there be a special agreement to give credit for a certain period, or such an usage in the trade as is equivalent to a special agreement. *(e)* But a shipwright who has once parted with the possession of the ship, or has worked upon it without taking possession, and a tradesman, who has provided ropes, sails, provisions, or other necessaries for a ship, are not by the Law of *England* preferred to other creditors, nor have any particular claim or lien upon the ship itself for the recovery of their demands *(f)*.

11. Thus where one *Clement (g)*, who had supplied sails

(b) *Rich* v. *Coe*, Cowp. 636, Trin. T. 17. *Geo.* 3. An expression of the same import was also used by his lordship in the case of *Farmer* v. *Davis*, 1 Ter. Rep. K. B. 109.

(c) *Westerdell* v. *Dale*, 7 Ter. Rep. K. B, 312.

(d) *Bland, exparte*, 2. Rose, 91. *Franklyn* v. *Hosier*, 4 B. & A. 341.

(e) *Raitt* v. *Mitchell & another*, 4 Campbell, 146.

(f) See *Hill, exparte*, 1 Maddocks, 61.

(g) *Hoare* v. *Clement*, 2 Show. 338. Hil. T. 35 & 36 *Car.* 2. It seems that the prohibition would have been general, if the master and former owner had applied for it, for the Court of Admiralty had no jurisdiction over the person in this case. See *Cradock's Case*, 2 Brownlowe, 37, reported also in *Owen*, 122. by the name of *Leigh* v. *Burleigh*, 7 *Jas.* 1. I have not cited this last case as an authority for the text, because it is not said in either of the books, that the suit in the Admiralty was against the *ship*, as well as the person.

sails and other necessaries for the use of a ship in a port in *England*, instituted a suit in the Court of Admiralty against the persons who were master and owner at the time of the supply, and also against the ship, and one *Hoare*, who had afterwards purchased the ship, the Court of King's Bench, on the application of *Hoare*, granted a prohibition to the Court of Admiralty, to stay the proceedings against him and the ship. Again *(h)*, where one *Ballam* instituted a suit in the Admiralty against a *Norwegian* ship, for payment of the price of a cable and anchor delivered on board the ship to the master in the River *Thames*, and an application was made to the Court of King's Bench to prohibit the Court of Admiralty from proceeding in the cause, against which and in favour of the proceedings in the Admiralty it was argued, that the want of the cable and anchor was occasioned by stress of weather at sea, and that the party would be without remedy if a prohibition should be granted, because the master was dead, and the owners were foreigners; the Court of King's Bench thought the ship not liable to the suit; *first*, because it did not appear that the ship was in her voyage, when she became in distress for want of a cable and anchor, *and at the time of the contract: secondly*, because there was no actual hypothecation; and said, that although by the maritime law every contract with the master of a ship implied an hypothecation, yet it was otherwise by the Law of *England*, unless expressly so agreed. And *(i)* where a ship had been sold, and the money brought into the Court of Chancery in a cause there depending, and upon inquiry into the nature and extent of the demands of the several parties in the cause upon the proceeds of the sale, it appeared, that the plaintiff,

(h) Justin v. *Ballam*. Mich. T. 1 *Anne* Salk. 34. 2. Lord Raym. 805. Both reporters say that the Court awarded a prohibition, but the latter adds, that at the importunity of the defendant's counsel the plaintiff was ordered to declare. No subsequent proceedings are any where mentioned.

(i) Watkinson v. *Bernardiston*, 2 P. Wms. 367. and Mr. Coxe's note thereon. 2 Eq. Ca. Ab. 512. A.D. 1726.

plaintiff, being master of the ship, had, by the desire of one of the defendants, the owner, employed several tradesmen in *London* to do work to, and find provisions and materials for the ship, for which he (the master) had promised to pay, and of which he had been forced by suit at law to pay a part; Sir *Joseph Jekyl*, the Master of the Rolls, declared, (and decreed accordingly) that this demand was not a lien on the ship, but that a demand of the master for wages paid by him to the mariners, and for money disbursed by him on the ship's account in the course of a foreign voyage, was a lien on the ship: and in this case it was said by the Master of the Rolls, "That "if a ship be in the River *Thames*, and money be laid out "there, either in repairing, fitting out, new-rigging, or "apparel of the ship, this is no charge upon the ship; "but the person thus employed, or who finds these neces- "saries, must resort to the owner thereof for payment; "and in such a case, in a suit in the Court of Admiralty "to condemn the ship for non-payment of the money, the "Courts of Law will grant a prohibition; and therefore "if the owner, after money thus laid out, mortgages the "ship, though it be to one, who has notice that the money "was so laid out, and not paid; yet such mortgagee is "well entitled, without being liable for any of the money "thus laid out for the benefit of the ship as aforesaid; "and the ship is no more liable for this money, than "a carpenter laying out money in the building of a "house, has a lien upon the house in respect thereof; "though by the Law of *Holland* he has; but this not "being the Law of *England*, such carpenter must resort "to those who employed him, or to the owner of the "house, for his money. But it is true, that if at sea, "where no treaty or contract can be made with the "owner, the master employs any person to do work on "the ship, or to new rig, or repair the same, this, for "necessity and encouragement of trade, is a lien upon the "ship,

" ship, and in such case the master, by the maritime " law, is allowed to hypothecate the ship."

12. But although the master may hypothecate the ship for necessary repairs, in the course of a foreign voyage, yet that part of the opinion of Sir *Joseph Jekyl*, which relates to his lien on the ship for his disbursements about such repairs, has been over-ruled in a late case, in which the point was much considered. One *Hussey*, the master of a vessel employed in the *South Sea* Fishery, having in the course of the voyage, for the necessary repairs and furniture of the ship, expended a considerable sum of money, and given his own promissory notes, and drawn bills of exchange upon his owner, finding at his return to *London* that the owner was become a bankrupt, and the bills were dishonoured; and being obliged to discharge some of them, and answerable for the others, endeavoured to retain the ship in his own possession as a security, but was forcibly deprived thereof by the assignees of the bankrupt, or other persons claiming an interest in the ship and cargo. Upon this he instituted a suit against these persons in the Court of Chancery, to restrain them from disposing of the ship, until his claim should be satisfied. And on his part it was contended, that he had a lien upon the ship for the money thus expended and debts incurred by him. The Lord Chancellor, considering this to be properly a legal question, sent the case to the Court of King's Bench for the opinion of the learned Judges of that Court *(k)*, and they were all of opinion that the master had not a lien upon the ship *(l)*.

13. Again, where a ship was sold under the authority of the Court of Chancery, and a person, who had previously repaired it in *England* by order of the master, acting under the authority of the ship's husband, claimed the

(k) Hussey v. *Christie and others*, 13 Ves. jun. 594.

(l) S. C. 9 East, 426.

the payment of his demand out of the money produced by the sale in a suit against the surviving part-owners, and the representatives of the others, who were dead; and it became necessary to determine whether the plaintiff's demand constituted a lien upon the ship, because, if it did, he was entitled to payment according to the prayer of his bill: Lord Chancellor *Hardwicke* said, "Certainly by the maritime law the master has power "to hypothecate both ship and cargo for repairs, &c. "during the voyage; which arises from his authority "as master, and the necessity thereof during the voyage, "without which both ship and cargo would perish; "therefore both that, and the law of this country, admit "such a power. But it is different, where the ship is in "port *infra corpus comitatus*, and the contract for re-"pairs, &c. made on land in *England*; then the rule of "that law must prevail. I know no case where the re-"pairs, &c. whether it was by part-owners, or sole-owner, "master or husbands, have been held a charge or lien "on the body of the ship. *Watkinson* v. *Barnardiston*, "2 *Wms.* 367. being a direct authority to the contrary; "and if the ship in the river *infra corpus comitatus* "should be proceeded against and stopped for such "debt, the courts of law would issue a prohibition, the "contract being on land and not arising from necessity." And his lordship dismissed the bill so far as it sought relief against the body of the ship, or the money arising by the sale thereof: but, expressing a doubt, as to the personal charge upon the owners in such a case, directed a trial at law upon that question *(m)*, as I have already mentioned *(n)*.

13. And in another case which happened very soon afterwards, where a person having repaired a ship here, and delivered it to his employer, who was become a bankrupt,

(m) *Burton* v. *Snee*, 1 Ves. 154. *Nov.* 1748.

(n) *Ante*, page 102.

rupt, had obtained possession of the money, for which the ship had been sold, and insisted before Lord Chancellor *Hardwicke*, that he had a specific lien on the ship for the repairs, and was not obliged to prove his demand as a debt under the commission; the Lord Chancellor said, that although the law of *Holland* gave a person, who repaired a house, or ship, a specific lien, there was no such law in *England*, and that he must account to the assignees of the bankrupt for the money in his hands arising from the sale of the ship, and come in under the commission for the debt due to him for repairs; and his lordship made an order accordingly *(o)*.

14. And in a case *(p)*, that came before the Court of King's Bench very soon after the determination of the particular case, in which Lord *Mansfield* is reported to have delivered the doctrine before quoted; wherein the master of a ship, of which the owner was become bankrupt, insisted upon a right to retain the ship from the assignees of the bankrupt, as a security both for his own wages, and for the expence of repairs, stores and provisions ordered by himself, and for which he was liable to pay, and after a demand made of the ship by the assignees had actually paid, Lord *Mansfield* said, "As to the stores "and repairs, it is a strong answer to the claim, that, "when the demand was made by the assignees, the "master had not paid. But if there was any lien originally, "it was in the carpenter: the master could not by pay- "ing him be in a better situation than his, and *he* had "parted with the possession, so that he had given up his "lien, if he ever had one. The other creditors had none. "Work done for a ship in *England* is supposed to be on "the personal credit of the employer. In foreign parts "the master may hypothecate the ship." The master therefore having no claim on the ship for wages and other disbursements,

(o) Ex parte Shank and others, 1 Atkins, 234. *August* 1758.

(p) Wilkins v. *Carmichael*, Hil. T. 19 *Geo.* 3. Doug. 101.

disbursements, can have none upon the freight, as lien upon freight is consequential to lien upon the ship *(q)*.

15. In a case *(r)*, which was brought by appeal from the Court of Session in *Scotland* to the *British* House of Lords, the Lords determined that the persons, who had repaired and furnished a ship in *Scotland*, the place of the owner's residence, had no claim upon the value of the ship itself for the payment of their demands. The owners of the ship had become bankrupts, and several persons, who had repaired and furnished it at different periods, instituted a suit against the trustee of the bankrupt's estate, claiming payment out of the proceeds of the sale of the ship in exclusion of the other creditors of the bankrupt, and insisting that all of them, or at least those, whose demands arose since the last voyage made by the ship, and in order to fit her out for another voyage, had by the law of *Scotland*, and of other *European* nations, *England* only excepted, a right of hypothecation or preference for the amount of their respective demands. The cause was heard and re-heard several times in *Scotland*, and different decisions pronounced there; some in favour of the claim, and others against it. The ultimate decision in *Scotland* was against the claim; founded principally, as it seems, upon a desire to render the law of *Scotland* conformable to the law of *England* on this subject *(s)*; for such a claim had been frequently allowed in the Courts of *Scotland* during a period of fourscore years preceding this cause; and this decision was affirmed by the House of Lords on the appeal.

I have

(q) Smith & another, assignees of *Kirkpatrick* a bankrupt, v. *Plummer & others*, 1 B. & A. 575.

(r) Wood & others v. *Hamilton*, decided in *Dom. Proc.* 15th *June* 1789. The printed papers are drawn up with great care and learning on both sides, and contain much valuable information.

(s) In the case of *Jamieson & others* v. *Laurie*, cited *post*, part 3, chap. 1. sect. 10. this is expressly said to have been the ground of the decision. Dr. Wynne's opinion as to the *English* law, was taken in the course of the proceedings for the information of the *Scotch* Judges.

I have detailed these cases with the more particularity, in order to prevent any mistake from the general doctrine delivered by Lord *Mansfield* in the case of *Rich* v. *Coe*, which has sometimes been cited as an authority up to the full extent of the terms, in which it was expressed.

16. There is however a determination of the Court of Admiralty, that should be mentioned in this place. An *American* ship was supplied in the river *Thames*, by certain merchants of *London*, with stores and ammunition for a voyage to *Venice*, and, having performed the voyage and returned to *London*, was sold under a decree of the Court in a suit instituted by the mariners for their wages. After payment of the wages, a surplus remained in the registry of the Court. The master had returned to *America* and died; and the owner was insolvent there. The merchants applied to the Court for payment of their demand out of this surplus: and in support of their application a distinction was taken between English and foreign ships. The learned Judge of the Court, after having had the cases looked into, said he found it had continued to be the practice of the Court to allow persons of this description to sue against proceeds remaining in the registry, notwithstanding prohibitions had been obtained on original suits instituted by them; and he referred to a particular case of the ship *Adventure* in the year 1763: and decreed that payment should be made according to the application *(t)*.

It is observable that there was not in this case any person representing the owner to object to the application. It appears by the report that the proceeds had been previously attached on the part of a creditor, and that the attachment had been removed before the decree, but no particulars relating to it are mentioned.

In the case of the same ship, a person who had acted as agent and broker to the ship in this country, afterwards

(t) The John, *Jackson*, 3 Rob. A. R. 288.

wards applied by petition for payment of the balance of his account; but the petition was rejected, by reason of the general and unsettled nature of the account, which was thought more fit for the Court of Chancery, where alone cross demands could be investigated.

17. We have seen by several of the preceding cases, that the master may in foreign parts *hypothecate* the ship: and I propose in the next place to consider the nature of those instruments of contract, by which a ship itself is expressly made security, and pledged by the master, for the repayment of a debt contracted with relation to it. It should be observed, that wherever the master may pledge the ship, he may pledge the freight also *(u)*.

These contracts are usually called contracts by *bottomry*, the bottom or keel of the ship being figuratively used to express the whole body thereof; sometimes also, but inaccurately, money lent in this manner is said to run at *respondentia*; for that word properly applies to the loan of money upon merchandize laden on board a ship, the repayment whereof is made to depend upon the safe arrival of the merchandize at the destined port. In like manner the repayment of money lent on bottomry, does in general depend upon the prosperous conclusion of the voyage; and as the lender sustains the hazard of the voyage, he receives upon its happy termination a greater price or premium for his money, than the rate of interest allowed by law in ordinary cases. The premium paid on these occasions depends wholly on the contract of the parties, and consequently varies according to the nature of the adventure. And as the master of the ship may, under certain circumstances, pledge the ship by a bottomry contract, so also may the owners or part-owners in any case,

(u) The GRATITUDINE, *Mazzola*, 3 Rob. A R. 240. and the JACOB, *Buer*, 4 Rob. A. R. 245. *See* as to the extent of an hypothecation of the freight, the last section of this chapter.

case, to the extent of their respective interests: and this they not unfrequently do, in order to raise money for the out-fit, when prudence dictates the propriety of such a measure, or the want of personal credit compels them to have recourse to it. The origin of these contracts is certainly very remote, and cannot now be accurately ascertained. It is said by a very learned writer (*x*), that they took their rise from the practice of allowing the master to hypothecate the ship in a foreign country, in order to raise money to refit. But this opinion may well be doubted; for although the practice of lending money upon maritime risks at a high premium was well known to the *Romans* before the time of *Justinian*, yet in those titles of the Digest and the Code (*y*), which expressly treat of this subject, no mention is made of contracts of this nature entered into by the *master* of a ship *in that character*, according to the practice which has since universally prevailed. And except for the purpose of securing the payment of maritime interest, actual hypothecation was not necessary to give the creditor a claim upon the ship, as I have already shewn. This point, however, is rather a matter of speculative curiosity than of useful research, and therefore I shall pursue it no further.

18. The consideration of these contracts, when made by the owners or part-owners themselves, does not properly belong to this place; their legality, and the risks, which the lender is to incur according to general rules, are very ably treated by Mr. *Park* and Mr. Serjeant *Marshall* in their chapters on bottomry and respondentia. I shall only mention such circumstances relating to them, as are connected with the subject of hypothecation by the

(*x*) 2 Black. Com. p. 457. c. 30. s. 3.

(*y*) *De Nautico Fœnore*. Dig. 22. 2. and *Codex*, 4. 33. See on this subject, Park, chap. 21. Guidon, chap. 18. Emerigon, tom. 2. p. 380. and stat. 6 *Geo.* 1. *c.* 18. *s.* 12.

the *master*: premising, however, that a total loss within the meaning of a bottomry bond, cannot happen if the ship exists in specie, although it may be so much injured in the voyage as not to be worth repairing and bringing to the ultimate place of destination, so as to constitute a total loss within the meaning of a policy of insurance on the ship *(z)*.

19. The name of *bottomry* has been sometimes incorrectly applied to a contract, by the terms of which the ship itself is not pledged as a security, but the repayment of money with a high premium for the risk, is made to depend upon the success of a voyage *(a)*. This is rather a loan upon a particular adventure to be made by a particular ship, than a loan upon the ship; and of course the lender has only the personal security of the borrower for the due performance of the contract. And it seems that loans have sometimes been made in this manner, and probably also with a pledge of the ship itself, to an amount exceeding the value of the borrower's interest in the ship, and such a contract is still legal in this country in all cases, except the case of ships belonging to the King's subjects bound to or from the *East Indies*; as to which the Legislature has enacted, "That all sums of money lent on bottomry or at "respondentia, upon any ship or ships belonging to his "Majesty's subjects bound to or from the *East Indies*, "shall be lent only on the ship, or on the merchandize "or effects laden, or to be laden, on board of such ship, "and shall be so expressed in the condition of the "bond, and the benefit of salvage shall be allowed to "the lender, his agents or assigns, who alone shall have "a right to make assurance on the money so lent, and no

(z) *Thompson* v. *Royal Exch. Ass. Co.* 1 M. & S. 31.

(a) Three forms of bonds of this sort are printed in the *Appendix* to the *Treatise of the Dominion of the Sea, and Body of Sea Law*, p. 659, &c.

" no borrower of money on bottomry, or at respon-
" dentia as aforesaid, shall recover more on any assu-
" rance, than the value of his interest on the ship, or
" in the merchandizes or effects laden on board of such
" ship, exclusive of the money so borrowed, and in case
" it shall appear that the value of his share in the ship,
" or in the merchandizes or effects laden on board, doth
" not amount to the full sum or sums he hath borrowed
" as aforesaid, such borrower shall be responsible to the
" lender for so much of the money borrowed, as he hath
" not laid out on the ship or merchandizes laden thereon,
" with lawful interest for the same, together with the
" assurance, and all other charges thereon, in the pro-
" portion the money not laid out shall bear to the whole
" money lent, notwithstanding the ship and merchan-
" dizes be totally lost *(b)*." This statute was introduced for the protection of the trade of the *East India Company*; and its rules must be complied with in the case of bottomry by the *master*.

20. By a former statute all contracts or agreements made by any of his Majesty's subjects, or any persons in trust for them, upon the loan of any money by way of *bottomry* on any ship in the service of *foreigners* bound or designed to trade within the limits of the *East India Company*'s charter, or of supplying such ships with any provisions, stores or necessaries, are made wholly void *(c)*. This statute also applies to contracts of bottomry by the *master*.

21. With regard however to contracts of this sort, made by the owners themselves in this country before the beginning of a voyage, by the terms of which the ship is pledged as a security, it should be observed, that the lender has not the same convenient and advantageous remedy

(b) 19 *Geo.* 2. *c.* 37. *s.* 5. | *(c)* 7 *Geo.* 1. *Stat.* 1. *c.* 21. *s.* 2.

remedy by suit in the Admiralty against the ship *(d)*, as he has in the case of hypothecation for necessaries by the master in a foreign port: and if the contract relate to a *British* ship, and purport to be, either a present assignment of the ship liable to be defeated on repayment of the money due at the end of the voyage, or a future assignment to take effect only upon failure of such payment, it seems that a compliance with the provisions of the register acts, mentioned in a preceding chapter with regard to the transfer of property in ships, is essential to the validity of the contract.

22. Neither does there seem any mode, by which a person, who advances money at *respondentia* upon goods laden and to be laden on board a ship on an outward and homeward voyage, can resort for the payment of his debt to the specific goods that may be brought back *(e)*. In a case of money lent to the master of an *East India* ship, who executed a bond in the form *(f)* commonly used on such occasions, and having taken out goods from this country and sold them in *India*, and brought back others purchased there with the proceeds of the first, became a bankrupt before he had repaid the loan, and while part of the goods and the money produced by the sale of another part remained in the hands of the *East India Company*, in whose warehouses they were deposited for sale, according to the rules of that trade: the Court of Chancery sent the following question for the determination of the Court of King's Bench, viz. "Whether the lender had "by law in respect of the money remaining due to "him

(d) Dict. accord. by *Holt*, C. J. in *Johnson* v. *Shippen*, 2 Ld. Ray. 983. and by *Lawrence*, J. in the case of *Busk* v. *Fearon*. B. R. Mich. T. 44 *Geo.* 3. This case is shortly reported in 4 East, 319. but this dictum of the learned Judge is not noticed. It was a case of a loan in *England* at respondentia, and the parties were *British* subjects.

(e) 2 Black. Com. 458.

(f) See Appendix, No. III.

"him on the bond, any lien upon, or interest in, the "money or goods remaining in the hands of the Com- "pany, or either of them, and whether the same, or "either of them, were by law liable to satisfy what so "remained due." The Court of King's Bench determined the question in the negative *(g)*. It may be observed, that the instrument used on this occasion does not contain a direct and formal pledge of the goods.

23. A contract of hypothecation made by the master does not transfer the property of the ship, but only gives the creditor a privilege or claim upon it, to be carried into effect by legal process *(h)*. It is contrary therefore to the nature of hypothecation, admitting the master's power to hypothecate the *cargo*, (as will be presently mentioned) *(i)*, that he should engage to deliver the cargo in the first instance into the hands of the lender's appointee at the place of destination so as to enable him to sell it and receive the proceeds for the use of the lender, without giving the merchant an opportunity of taking it into his own hands upon discharging the incumbrance; and consequently the master has no power to enter into such an engagement *(k)*.

24. A contract of this sort is one of those matters which are technically called *Choses in Action*; and therefore the duty that may be created by it is not assignable by the Common Law of *England*, so as to enable an assignee to sue upon it in his own name, or to set off the amount against a demand upon himself, in our Courts of Common Law; although such an assignment may be made available in a Court of Equity: and it is questionable

(g) Busk v. *Fearon & others*, 4 East, 319. See *Glover* v. *Black*, 3 Burr. 1394.

(h) See *Johnson* v. *Shippen*, 2 Ld. Ray, 984.

(i) Post. sect. 33. of this chapter.

(k) Johnson v. *Greaves*. 2 Taunton, 344.

tionable whether a demand arising out of such a contract can be made the subject of a set-off under the statutes in the hands of the original party *(l)*.

25. It is obvious that a loan of money upon bottomry, while it relieves the owner from many of the perils of a maritime adventure, deprives him also of a great part of the profits of a successful voyage: and therefore in the place of the owners residence, where they may exercise their own judgment upon the propriety of borrowing money in this manner, the master of the ship is by the maritime law of all states precluded from doing it, so as to bind the interest of his owners, without their consent *(m)*.

26. The meaning of the words "place of residence" *(la demeure des proprietaires)* has given occasion to some questions in *France*. With us I apprehend the whole of *England* is considered for this purpose as the residence of an *Englishman*; at least before the commencement of a voyage. *Ireland* has been held to be a foreign country, in the case of an *English* ship, hypotheticated by the master there in the course of a voyage *(n)*. But doubt may be entertained, whether the incorporation of *Ireland* with this country by the Act of Union, may not have the effect of altering the rule *(o)*. The Court of Admiralty not long ago granted its warrant to arrest a ship on a bottomry bond executed at *Jersey* for the repairs and outfit, by a person who was both master and owner *(p)*. In the bond this person was described as of *London*, and the ship as of *Jersey*. The authority of the Court to hold cognizance of

(l) Marshall v. *Wilson*, at Guildhall, Dec. 18, 1811, before Lord *Ellenborough*, Ch. Justice.

(m) Hanseatic Ordinance, art 58. *Hanseatic Ordinance, of* 1614, tit. 6. art. 1. *French Ordinance*, liv. 2. tit. 1. *Du Capitaine*, art. 17. & liv. 3. tit. 5. *Des contrats a grosse*, art. 8. Emerigon, tom. 2. p. 424. Molloy, book 2. chap. 11. sect. 11. Weskett, tit. Bottomry, sect. 20. 23. *Lister* v. *Baxter*, 2 Stra. 695.

(n) In *Menetone* v. *Gibbons*, 3 Ter. Rep. K. B. 267, the hypothecation was made in *Ireland*.

(o) See the judgment in the RHADAMANTHE, *Mayer*. 1 Dodson. A. R. 201.

(p) The BARBARA, *Chegwin*, 4 Rob. A. R. 1.

of the cause does not appear to have been disputed by the owner; and in the result the ship was sold under a decree of the Court *(q)*. In a more recent case, wherein it appeared that a *Spanish* ship, on a voyage from *Alicant* to *London*, put into *Corunna* to repair, and that the master being unknown and without credit, gave a bottomry bond there for money advanced to defray the expences; Lord *Stowell* decided that the bond was valid, and in the course of his judgment observed, "It was not in the same "province of that distracted kingdom, that the trans-"action took place, nor could the master, under the "circumstances in which he was placed, have applied to "his owners for assistance; and added, it is true that it "is usually required as a condition necessary to the "validity of bonds of this kind, that they should be ex-"ecuted in a foreign port, but the law does not look to "the mere locality of the transaction. The validity or "invalidity of the bond, does not rest on that circum-"stance only, but upon the extreme difficulty of commu-"nication between the master and his owners. The "difficulty of communication was, in fact, greater than "if the ship had been in a foreign port. If the policy of "the law in allowing this authority to the master to "hypothecate his ship and cargo, is founded on the "extreme difficulty of communication with his owners, "there is no reason for saying that there was not abun-"dance of difficulty to authorize him to do so in the "present instance *(r)*."

With regard to a *foreign country*, the rule appears to be, that if the master of a vessel has occasion for money to repair or victual his ship, or for any other purpose necessary to enable him to complete the enterprize, in which she is engaged, whether the occasion arises from any extraordinary peril or misfortune, or from the ordinary course

(q) The BARBARA, *Chegwin*, 4 Rob. A. R. 2.

(r) LA YSABEL, *Boyo*. 1 Dodson's Admiralty Reports, 273.

course of the adventure, he may, if he cannot otherwise obtain it, borrow money on bottomry at maritime interest, and pledge the ship, and the freight to be earned in the voyage, for repayment at the termination of the voyage. When this is done, the owners are never personally responsible *(s)*. The remedy of the lender is against the *master* or the ship.

27. But if the person who thus advances money, does not chuse to take upon himself the risk of the ship's return, and will be content not to demand maritime interest, there seems to be no reason why the master should not pledge both the ship itself, and the personal credit of the owner. And in a case, which came before Sir *John Strange*, Master of the Rolls, wherein a man, who had advanced money to refit a ship in distress at *Jamaica*, and had taken from the master both a deed of hypothecation of the ship, and bills of exchange upon the principal owner in *England*, for the amount of the sum advanced, claimed payment of the owners personally, the ship having been captured on the voyage home; it was decreed that he should recover the money; and it is said also, that the ship was thought to be well hypothecated *(t)*.

It is necessary, however, to the validity of a bond securing maritime interest, that the money should be originally advanced upon the credit of the ship. If it be originally advanced upon the credit of the owner, and such a bond be afterwards given, in consequence of doubt arising as to his responsibility, even before the ship leaves the place of advance, the bond will be invalid *(u)*.

It

(s) Molloy, book 2. chap. 11. sect 11.

(t) *Samsun* v. *Bragington*, 1 Ves. 443. It appears by the entry of the proceedings in the Registrar's book, that the defendant *Bragington* said in his answer, that he believed 20 *per cent* was added to the actual expence, to make up the sum, for which the deed of hypothecation was given; but this does not seem to have been proved. The deed of hypothecation, as stated in the plaintiff's bill, was for payment absolutely, and not upon condition of the ship's safe arrival in *England*, and the deed was proved in the cause.

(u) The AUGUSTA, *D'Bluhn*, 1 Dodson, A. R. 283.

It is no objection to the validity of such a bond, that it happens to be given to the consignees of the cargo, the necessity of borrowing by hypothecation and the fairness of the transaction being established *(v)*. Such a bond may be good in part, and bad in part *(x)*.

28. There is no settled form of contract in use on these occasions; sometimes an instrument in the form of a bond, at others in the form of a bill of sale, at others of a different shape, is made use of *(y)*. But whatever be the form; the occasion of borrowing, the sum, the premium, the ship, the voyage, the risks to be borne by the lender, and the subjection of the ship itself as security for the payment, all usually are, and properly ought to be expressed. Bills of Exchange drawn by the master on the owner, as security for money advanced to the master, though accompanied with a verbal engagement by him that the ship shall be liable, cannot be considered, as an instrument of hypothecation *(z)*. Upon the arrival of the ship in this country, if the loan is not repaid within the time prescribed, the agent of the lender applies to the Court of Admiralty, with the instrument of contract, and a proper affidavit of the facts, and obtains a warrant to arrest the ship, and cite all persons interested to appear before the Court, if they think proper to do so *(a)*. If in the course of the proceedings it becomes necessary to sell the ship, the Court decrees a sale to be made under the direction of its own commissioners, and afterwards distributes the proceeds among the different claimants, as justice requires: and this may be done, if the owners or persons interested

(v) The ALEXANDER, *Tate*, 1 Dodson, A. R. 278.

(x) The AUGUSTA, *D'Bluher*, 1 Dodson, A. R. 283.

(y) The reader will find in the *Appendix*, two different forms used in the same voyage, one at *Bombay*, the other at the *Cape of Good Hope*. In *Johnson* v. *Shippen*, 2 Ld. Raym. 982. the hypothecation was by *bill of sale*. In *Menetone* v. *Gibbons*, 3 Ter. Rep. K. B. 267. it was by *bond*.

(z) 3 Vesey & Beams, 135. 19 Vesey, jun. 474, and 2 Rose, 194 & 229, *ex parte* Halket.

(a) The citation is generally made by posting a copy of the warrant upon some part of the ship.

interested in the ship, do not appear at the times appointed by the Court; otherwise their absence or default would occasion a failure of justice.

29. This proceeding *in rem.* against the ship itself, is the proper and peculiar province of the Court of Admiralty. The jurisdiction of the Courts of Common Law is exercised by suit against the person only (except in some particular cases of forfeiture, or demands of the crown) although in many cases judgment is ultimately pronounced for the recovery of the subject of dispute in specie.

30. The legality of the proceedings in the Court of Admiralty, in case of such hypothecation by the master in a *foreign country*, which are calculated to administer justice in a manner that cannot be effected by the Courts at Westminster Hall, has been recognized by those Courts in a variety of cases, and is now so fully established, that it appears unnecessary to mention their particular circumstances, and I shall therefore merely refer to them in a note *(b)*, in order to enable the learned reader to consult them with facility, if he has occasion to do so.

31. It is however equally clear, that the master cannot charge the ship by any instrument of hypothecation for any debt of his own. The attempt would be a fraud in him; and those, who should aid him to do so, would be parties to the fraud; and therefore the fairness of the loan may be made the subject of inquiry and contest, if justice require it. But provided the ship have been in a state of want, and the money fairly advanced to the master to relieve her, his subsequent misapplication of

(b) Bridgman's Case. 12 *Jas.* 1. Hob. 11. Moor. 918. 1 Ro. Ab. 530, *Scarborough* v. *Lyrus.* 3 *Car.* 1. Latch, 252. Noy, 95. *Corset* v. *Husely*, 1 *W.* & *M.* Comb. 135. Rep. temp. Holt. 48. *Benzen* v. *Jefferics*, 8 & 9 *W.* 3. 1 Ld. Raym. 152. *Johnson* v. *Shippen.* 2 *Ann.* 2 Ld. Raym. 982. Salk. 35. 6 Mod. 79. Rep. temp. Holt, 48. *Lister* v. *Baxter*, 12 *Geo.* 1. Stra. 695. *Menetone* v. *Gibbons*, 29 *Geo.* 3. 3 Ter. Rep. K. B. 267.

of it will not deprive the lender of the benefit of his security *(c)*.

As an illustration of this rule, that the master cannot bind the ship for a debt of his own, the following case is related by *Loccenius (d)*. The master of a ship being in a *Spanish* port, and having exposed the ship to seizure by his neglect to comply with a particular regulation of the country, entered into an agreement with a person, who was supposed to possess sufficient influence to obtain the restitution of the ship, to pay him a very considerable sum with maritime interest, if he should procure the restitution of the ship, and she should afterwards return home in safety; and for securing the payment executed an instrument in the nature of a bottomry bond. By the interest of the person, with whom the agreement was made, the ship was restored; and afterwards returned home in safety; and he instituted a suit against the ship upon the instrument executed to him by the master. But it was determined that the ship and owners were not chargeable by this contract.

32. It should be observed of these securities in general, that if they are given at different periods of a voyage, and the value of the ship is insufficient to discharge them all, the last in point of date is entitled to priority of payment, because the last loan furnished the means of preserving the ship, and without it the former lenders would entirely have lost their security; *salvam fecit totius pignoris causam (e)*.

This is the general rule, but the security last in date must have arisen out of the destitute situation of the master, and his inability to obtain the necessary supplies for his vessel, on the personal credit of himself or his employers.

(c) Dig. 14. 1. 7. 2. *Molloy*, book 2. ch. 11. sect. 11. See also the judgment of Sir *W. Scott*, in the case of the GRATITUDINE, *Mazzola*, 3 Rob. A. R. 272.

(d) Lib. 2. c. 6. s. 12.

(e) *Bynkershook. Quest. Jur. Pub.* lib. 1. c. 19.

employers. Otherwise it will not be a security of that privileged kind, which is entitled to claim precedence and defeat the right of a foreign merchant, who has previously advanced money on the ship: This was the decision in a case in the Court of Admiralty, of which the following were the facts. The vessel was bound on a voyage from *Malta* to *London*, and put into *Port Mahon* in distress, where the master hypothecated the ship and freight. The ship being repaired, proceeded on her voyage, and in consequence of damage put into *Cork*, from whence the master applied by letter to the principal owners of the cargo for money to pay for the necessary repairs, who, in consequence of this application, opened a credit with Messrs. *Goin & Fennel* of *Cork*, and gave them directions to advance such money to the master, as should be requisite to repair the ship. Messrs. *Goin & Fennel* advanced the money, and took bonds of bottomry, which they indorsed over to the principal owners of the cargo, and drew on them bills of exchange for the amount of the money so advanced to the master. The Court pronounced for the validity and priority of the first bottomry bond granted at *Port Mahon (f)*.

33. The value of the ship and freight, supposing the ship to reach the place of destination, may sometimes be thought an insufficient security for the amount of the expences of the repairs, &c. necessary to put the ship into a condition to proceed with its cargo and perform the voyage. In such a case of necessity, it has been always held, that the master, if he cannot otherwise obtain money, may sell a part of his cargo to enable him to convey the residue to the destined port *(g)*; and it has been very solemnly decided in the Court of Admiralty, that the master may hypothecate the cargo

(f) RHADAMANTHE, *Mayer*, 1 Dodson, A. R. 201.

(g) So where money is necessary to discharge the salvage on a recapture: by Lord *Ellenborough*, Ch. Justice, in *Parmenter* v. *Todhunter*, 1 Campbell, 541.

cargo as well as the ship and freight *(h)*. An *Imperial* ship coming from the *Mediterranean* with a cargo of fruit to *London*, was driven into *Lisbon* to refit. An estimate and survey were made under the authority of a Court at *Lisbon*, and it was declared by the surveyors that the ship was of sufficient value to warrant the repairs. The sum, for which the deed of hypothecation was executed, exceeded the estimate of the ship in its damaged condition, and of the freight, by a sum, which was supposed to be about equal to the charge, that would fall upon the cargo for unloading, warehousing, &c. The ship arrived at *London*; and the loan not being discharged, the creditor instituted a suit in the Court of Admiralty against the ship and cargo. The ship produced considerably less than its estimated value, on account of its being a foreign ship, and the impossibility of obtaining a register for it. It was admitted, that the question as to the validity of the hypothecation of the cargo had never been actually contested and decided in this country; but several precedents of proceedings in the Court upon similar cases were found among the records of the Court, and it was agreed, that the practice of hypothecating the cargo in such cases was frequent among merchants. It did not appear whether or no the master had an opportunity of sending the cargo by another ship: but the learned Judge of the Court held that, according to all the authorities on the subject of transhipment, the master was not *bound* to tranship, and thinking, upon the view of all the circumstances of the case, that the master had acted for the best according to the appearance of things at the time, decided that the hypothecation of the cargo was valid; considering the hypothecation of *the whole* to be both in its principle, and in the consequences, that might ordinarily result

(h) The GRATITUDINE, *Mazzola*, 3 Rob. A. R. 240. The instrument of hypothecation used on this occasion will be found in the *Appendix* to this Treatise, No. IV.

result from it, exactly analogous to the sale of *a part*. On account of the great importance of the question, the learned Judge invited the parties to bring it by appeal before another tribunal.

34. It has been observed, that wherever the master may pledge the ship, he may pledge the freight also. A question upon the extent of such a pledge has been decided in the Court of Admiralty *(i)*. The master of a *Hamburgh* ship, being at *Baltimore*, and about to sail for *Cork*, executed a bottomry bond, purporting to bind the ship and her freight, in general terms, neither expressly confined to the freight of the present voyage, nor extended to future adventures. The ship sailed to *Dublin* instead of *Cork*, and thereby the holder of the bond lost the opportunity of instituting proceedings upon it at that time, and the freight was accounted for to the owners, though the deviation did not appear to have been made with this view. From *Dublin* the ship sailed again to *America*, and from thence to *London*, at which latter place the holder procured the ship to be sold under the authority of the Court of Admiralty; and the produce being insufficient to discharge the bond, he petitioned the Court to have the freight of the last voyage applied to that purpose. The freight was then in the hands of the agent of the owners: it was objected, that such a bond created a lien upon the freight of the existing voyage only, but the learned Judge of the Court, adverting to the fact of the freight of both voyages having come to the account of the owners, granted the prayer of the petition; at the same time, desiring "not to be understood as laying down any general rule applicable to all "circumstances and all cases, where any third party might "have become interested in the freight of the subsequent "voyage."

(i) The Jacob, *Bear*, 4 Rob. Ad. Rep. 245.

CHAPTER THE FOURTH.

OF THE BEHAVIOUR OF THE MASTER AND MARINERS.

1. THE great trust reposed in the master by the owners, and the great authority which the law has vested in him, require on his part, and for his own sake, no less than for the interest of his employers, the utmost fidelity and attention. For if any injury or loss happen to the ship or cargo by reason of his negligence or misconduct, he is personally responsible for it; and although the merchant may elect to sue the owners, *they* will have a remedy against him to make good the damages, which they may be compelled to pay. So, if he make any particular engagement or warranty without a sufficient authority from his owners, although the owners may be answerable to the persons with whom he contracts, by reason of the general power belonging to his situation and character, he is in like manner responsible to the owners for the injury sustained by them in consequence of his acting beyond, or in violation of, the particular authority given to him *(a)*.

1. *b*. He is bound also to employ his whole time and attention in the service of his employers, and the performance of the duties of his particular character, and is not at liberty to enter into any engagement for his own benefit, that may occupy any portion of his time in other concerns: and therefore if he do so, and the price of such engagement happen to be paid into the hands of his owners, they may retain the money, and he cannot recover it from them. This is

(a) The owners are also answerable for damage done by their ship to another through negligence; and this although the ship be chartered to the Commissioners of the Navy, and a naval officer be on board, and have the command. *Fletcher* v. *Braddick*, 2 New. Rep. C. P. 182.

is well illustrated by the following case:—The master of an *English* ship, being at *Smyrna*, entered into an agreement with the deputy commissary of an *English* army to let the ship to government for six months; and having stipulated that his owner should receive forty shillings per ton per month, he required that he himself should be allowed the usual primage. The commissary refused to make any allowance by way of primage, the freight being so very high; but as he expected great assistance from the master's skill and activity in managing the transport service in that quarter, he agreed that instead of primage the master should be allowed one shilling per ton per month on the ship's tonnage. The ship remained in the *Mediterranean* under this contract for about nine months. The master might have obtained a cargo of merchandize at *Smyrna*, upon which he would be entitled to a primage of five per cent on the freight: during the period of this engagement his personal exertions were of considerable benefit to the public service. The whole of the money was paid by government into the hands of the owner; and the master brought an action against him to recover this allowance. The cause was tried before Lord *Ellenborough*, who said, "Is it contended that a servant, who has engaged to devote the whole of his time and attention to my concern, may hire out his services, or a part of them, to another? It would have been a different thing, if the owner had been suing for this money; but I am clearly of opinion that at all events the present plaintiff has no right to it. Under this contract he must have been taken from superintending the defendant's ship; and I don't know how far it might go, if such earnings could be recovered in a court of justice. No man should be allowed to have an interest against his duty. I will assume that the plaintiff obtained as high a freight as possible for his owners, and that his services to government were meritorious; still there would be no security in any department of life or business, if servants

" could legally let themselves out in whole, or in part. " My opinion upon the subject is quite decisive; and if it " be doubted, I beg that a bill of exceptions may be ten- " dered *(b)*." No lawyer will doubt the correctness of this opinion. It was fit that the reader should be informed of it in the very forcible terms, in which it was expressed.

Upon principles analogous to those which governed the decision in the case of *Thompson* v. *Havilock* it was ruled by Lord *Ellenborough*, that a premium received by the master of a ship from the state of the exchange, in respect of a bill drawn by him upon his owners on the ship's account, belonged to the owners; although it was suggested, that in practice the master was allowed to retain a profit of this kind for his own use *(c)*.

2. It is impossible to frame any set of general rules competent to enforce the performance of all the civil obligations of a person of this description, and the legislature of this country has very prudently declined the attempt. With respect however to the mariners, whose duty is much more simple, the legislature has introduced a few very important rules *(d)*, which were at first confined to ships sailing from this country to parts beyond the seas; and afterwards extended to the *British* colonies in *America (e)*. Similar provisions have been since made with respect to vessels of the burthen of one hundred tons and upwards, employed in the coasting trade, and going to open sea *(f)*.

3. By these rules, the contract for service must be made with the master, by a written agreement signed by him and the mariners *(g)*. If after entering into such an agreement,

(b) Thompson v. *Havilock*, 1 Campbell 527. Upon the recommendation of the Ch. Justice, the owner consented to make the master some allowance in the nature of primage. But he could not have insisted upon this.

(c) Dipdlock & others v. *Blackburn*. 3 Camp. 43.

(d) 2 *Geo.* 2. *c.* 36. *(e)* 2 *Geo.* 3. *c.* 31. *(f)* 31 *Geo.* 3. *c.* 39. These Statutes will be found in the *Appendix* to this treatise.

(g) 2 *Geo.* 2. *c.* 36. *s.* 1 and 2. and 31 *Geo.* 3. *c.* 39. *s.* 1 and 2.

ment, a mariner deserts or refuses to proceed on the voyage, he forfeits to the owners all the wages then due to him, and a justice of the peace may, on complaint of the master, owner, or person having charge of the ship, issue a warrant to apprehend him; and in case he refuses to proceed on the voyage, and does not assign a sufficient reason for his refusal, may commit him to hard labour in the house of correction, for not more than *thirty* nor less than *fourteen* days *(h)*. If he absents himself from the ship without the leave of the master, or other chief officer having the charge of the ship, he forfeits *two* days pay for every such day's absence, to the use of *Greenwich* Hospital *(i)*. And in the case of foreign voyages, if upon the ship's arrival at her port of delivery here, he leaves it without a written discharge from the master, or other person having the charge of the ship, or if in the coasting trade he quits the ship before the voyage is completed and the cargo delivered, or before the expiration of the term for which he engaged, or before he has such a discharge in writing, he forfeits one month's pay to the same use *(k)*. But these provisions do not extend to bar any seaman from entering to serve his Majesty on board of any of his ships *(l)*.

3. *b.* There is one very important branch of the master's duty in time of war, which he should be most careful to observe: I allude to his conduct when sailing under convoy: for besides the civil responsibility that he may incur to his owners or freighters by misbehaviour in this respect *(m)*, it may be expected that in any future war, statutes may be again enacted similar to those which were passed during the late war, whereby he may be subjected to fine or imprisonment. And it is at all times his duty to communicate to his owners any occurrence which may lead to a suspicion

(h) 2 *Geo.* 2. *c.* 36. *s.* 3 and 4. and 31 *Geo.* 3. *c.* 39. *s.* 3.
(i) 2 *Geo.* 2. *c.* 36. *s.* 5 and 31 *Geo.* 3. *c.* 39. *s.* 4.
(k) 2 *Geo.* 2. *c.* 36. *s.* 6. and 31 *Geo.* 3. *c.* 39. *s.* 4.
(l) 2 *Geo.* 2. *c.* 36. *s.* 13. and 31 *Geo.* 3. *c.* 39. *s.* 4.
(m) See part 3. *c.* 3. *s.* 6.

cion or doubt that his ship has sustained a damage, lest his owners should lose the benefit of an insurance which they may effect; and he thereby become answerable to them *(n)*.

4. By the common law, the master has authority over all the mariners on board the ship, and it is their duty to obey his commands in all lawful matters relating to the navigation of the ship, and the preservation of good order: and such obedience they expressly promise to yield to him by the agreement usually made for their service *(o)*. In case of disobedience or disorderly conduct, he may lawfully correct them in a reasonable manner; his authority in this respect being analogous to that of a parent over his child, or of a master over his apprentice or scholar *(p)*. Such an authority is absolutely necessary to the safety of the ship, and of the lives of the persons on board. But it behoves the master to be very careful in the exercise of it, and not to make his parental power a pretext for cruelty and oppression. The framers of the ancient marine ordinances appear studiously to have avoided the mention of this power. The *French* ordinance *(q)* specifies certain particular modes of punishment, which the master may inflict on "drunken "and disobedient mariners, and those who ill-treat their "comrades, or commit other like faults in the course of "their voyage," but it requires the consent of the steersman and mate: by the law of *England* such consent is not required; nevertheless the master should, except in cases requiring his immediate interposition, take the advice of the persons next below him in authority, as well to prevent the operation

(n) *Gladstone* v. *King*. 1 M. & S. 35.

(o) See *Appendix*, N° V.

(p) Magister nullam habet jurisdictionem ingentem suarum navium, sed quandam tantum œconomicam potestatem vel disciplinam, quæ usque ad levem castigationem, pro corrigendâ insolentia et male moratâ vitâ seu licentiâ nautarum et vectorum; quemadmodum eam tenet pater in filios, magister in discipulos, dominus in servos vel familiares. *Casaregis*, Disc. 136. n. 14. cited by *Valin*, on the *French Ordinance*, tom. 1. p. 449. See also Ordin. of Phil. 2. A. D. 1563. 2 Mag. 19. *Molloy*, book 2. ch. 3. sect. 12. and the case of *Watson* v. *Christie*, 2 Bos. & Pull. 224.

(q) Liv. 2. tit. 1. *Du Capitaine*, art. 22.

operation of passion in his own breast, as to secure witnesses to the propriety of his conduct. For the master, on his return to this country, may be called upon by action at law, to answer to a mariner, who has been beaten or imprisoned by him, or by his order, in the course of a voyage; and for the justification of his conduct, he should be able to shew not only that there was a sufficient cause for chastisement, but also that the chastisement itself was reasonable and moderate, otherwise the mariner may recover damages proportionate to the injury received *(r)*. And if the master strike a mariner without cause, or use a deadly weapon as an instrument of correction, where moderate correction may be inflicted, and death ensue, he will be guilty either of manslaughter or murder *(s)*, according to the rules and distinctions of the criminal law of *England* in analogous cases, all of which are applicable to persons in this situation; and all offences committed at sea, may be tried under the Admiralty commission, and punished as if committed on shore *(t)*. In the case of actual and open mutiny by the crew or any part of them, the resistance of the master becomes an act of self-defence, and is to be considered in all its consequences from that point of view. The ordinances of *Oleron (u)* and *Wisbuy (x)*, declare that a mariner who strikes the master, shall either pay a fine, or lose his right hand; a strange as well as cruel alternative, unknown in the modern jurisprudence of this country.

5. But although the master may by force restrain the commission of great crimes, he has no judicial authority to

(r) To an action of this sort, the master must plead specially that the plaintiff committed such a particular fault, and that he corrected him moderately for it. The plaintiff by his replication may either deny the cause of correction, or, admitting the cause, may insist that the correction was excessive. If the master does not plead his justification specially, he will not be entitled to give in evidence under the general issue, for the purpose of mitigating damages, facts, which, if pleaded, would amount to a justification. *Watson* v. *Christie*, 2 Bos. & Pull. 224.

(s) *Captain Kidd's Case*, 5 State Trials, 287.

(t) 39 *Geo.* 3. *c.* 37.

(u) *A.* 12. *(x)* *A.* 24.

to punish the criminal, but ought to secure his person, and cause him to be brought before a proper tribunal of his country *(y)*. And all Justices of the peace are empowered to receive informations touching any murder, piracy, felony, or robbery upon the sea, and to commit the offenders for trial *(z)*.

6. The term *barratry*, which is often used as well by foreign writers, as those of our own nation, is generally understood in this and in most other countries to denote a *fraudulent* act of the master or mariners committed to the prejudice of the owners of the ship *(a)*. In *France* it is often used in a more enlarged sense, and comprehends acts of mere ignorance or unskilfulness, not accompanied with a fraudulent design *(b)*. This word taken even in the more limited sense, in which it is used in this country, does not denominate any species of crime punishable by law; but several offences committed by the master and mariners in violation of their trust and duty, and which fall within the definition of barratry, are punishable by different statutes, which I shall now proceed to mention.

7. First, as to the offence of wilfully destroying the ship. This is now punishable with death. By the first statute passed on this subject, in which it is recited that "it often "happens that masters and mariners of ships having in- "sured or taken upon bottomry greater sums of money than "the value of their adventure, do wilfully cast away, burn, "or otherwise destroy the ships under their charge, to the "merchants and owners great loss." It is enacted, "That "if any captain, master, mariner, or other officer belonging "to any ship, shall wilfully cast away, burn, or otherwise "destroy

(y) Hanseatic Ordin. art. 30. *French* Ordinance, book 2. tit. 1. *Du Capitaine*, Art. 23. *Roccus*, Not. 8.

(z) 43 *Geo.* 3. *c.* 160. *sect.* 78.

(a) Emerigon, tom. 1. p. 366. To constitute barratry, the master must be proved to have acted against his better judgment. Per Lord *Ellenborough* in *Todd* v. *Ritchie*, 1 Starkie, 240.

(b) Valin, tom. 2. p. 80. *Pothier*, des assurances num. 65.

" destroy the ship, unto which he belongeth, or procure the " same to be done, he shall suffer death as a felon *(c)*."

By the *second*, it is enacted, " That if any captain, " master, mariner, or other officer belonging to any ship, " shall wilfully cast away, burn, or otherwise destroy the " ship, unto which he belongeth, or procure the same to " be done, to the prejudice of the owner or owners thereof, " or of any merchant or merchants, that shall load goods " thereon, he shall suffer death as a felon *(d)*."

Further provisions were made in the reign of *George the First (e)*, but soon after the determination of an important prosecution at the *Old Bailey (f)*, and I presume in order to remedy a defect in the law manifested on that occasion, they were repealed by the Legislature *(g)*, except as to prosecutions for offences committed before the 16th of July 1803 *(h)*. And it was then enacted, " That if any person " or persons shall, from and after the *sixteenth* day of July " 1803, wilfully cast away, burn, or otherwise destroy, any " ship or vessel, or in anywise counsel, direct, or procure " the same to be done, and the same be accordingly done, " with intent or design thereby wilfully and maliciously to " prejudice any owner or owners of such ship or vessel, or " any owner or owners of any goods loaden on board the " same, or any person or persons, body politic or corporate, " that hath or have underwritten or shall underwrite any " policy or policies of insurance upon such ship or vessel, " or on the freight thereof, or upon any goods loaden on " board the same, the person or persons offending therein " being thereof lawfully convicted, shall be deemed and " adjudged a principal felon or felons, and shall suffer " death as in cases of felony without benefit of clergy."

And

(*c*) 22 & 23 *Car.* 2. *c.* 11. *s.* 12.
(*d*) 1 *Ann, stat.* 2. *c.* 9. *s.* 4.
(*e*) 4 *Geo.* 1. *c.* 12. *sect.* 3; 11 *Geo.* 1. *c.* 29. *sect.* 5, 6, and 7
(*f*) The case of *Easterby* v. *Macfarlane*, Addenda to East's P. C. p. xxvi.
(*g*) 43 *Geo.* 3. *c.* 113. See *cap.* 79. of the same year as to *Ireland*.
(*h*) Id. *sect.* 4.

And, "That if any such ship or vessel shall, from and "after the *sixteenth* day of July in the year of our Lord "1803, be wilfully cast away, burnt, or otherwise de- "stroyed, within the body of any county of this realm, "that then the said several offences, as well in wilfully "casting away, burning, or otherwise destroying such ship "or vessel, as in counselling, directing, or procuring the "same to be done as aforesaid, shall and may be respec- "tively enquired of, tried, determined, and adjudged in the "same Courts, and in such manner and form, as felonies "done within the body of any county, by the laws of this "realm now are to be, or by virtue of this Act hereafter "may be, inquired of, tried, determined, and adjudged: "and if any such ship or vessel shall be wilfully cast away, "burnt, or otherwise destroyed on the high seas, then that "the said several offences, as well in wilfully casting away, "burning, or otherwise destroying any such ship or vessel, "as in counselling, directing, and procuring the same to "be done as aforesaid, shall and may be respectively in- "quired of, tried, determined, and adjudged, before such "Court, and in such manner and form as in and by an "Act made in the eight-and-twentieth year of the reign of "King *Henry the Eighth*, intituled, *For Pirates*, is ap- "pointed and directed for the inquiring, trying, determin- "ing, and adjudging of felonies upon the high seas."

This statute contained also some special provisions for the trial of accessaries, which have been since repealed, in consequence of the general provisions made by the Legislature on that subject *(i)*.

8. SECONDLY, as to the offences of running away with the ship or cargo, and of making a revolt in the ship. These also are now punishable with death.

For by a statute passed in the reign of King *William the Third (k)*, it is enacted, "That if any commander or "master

(i) *St.* 7 *Geo.* 4. *c.* 64. *s.* 9, 10, 11, 32.

(k) 11 & 12 *Wm.* 3. *c.* 7. *s.* 9. made perpetual by 6 *Geo.* 1. *c.* 19.

" master of any ship, or any seaman or mariner, shall in " any place, where the admiral hath jurisdiction, betray " his trust and turn pirate, enemy, or rebel, and piratically " and feloniously run away with his or their ship or ships, " or any barge, boat, ordnance, ammunition, goods or " merchandizes; or yield them up voluntarily to any pirate, " or shall bring any seducing messages from any pirate, " enemy or rebel, or consult, combine, or confederate with, " or attempt or endeavour to corrupt any commander, " master, officer or mariner, to yield up or run away with any " ship, goods, or merchandizes, or turn pirate, or go over to " pirates, or if any person shall lay violent hands on his com- " mander, whereby to hinder him from fighting in defence " of his ship and goods committed to his trust, or that shall " confine his master, or make or endeavour to make a revolt " in the ship, shall be adjudged, deemed, and taken to be " a *pirate, felon,* and *robber,* and being convicted thereof " according to the directions of this Act, shall have and " suffer pains of *death,* loss of lands, goods and chattels, " as *pirates, felons,* and *robbers* upon the seas, ought to " have and suffer *(l).*"

9. THIRDLY, as to the offence of not resisting pirates and enemies *(m).* It appears formerly to have been a practice with the *Turkish pirates* to restore a ship, and the goods of the master and mariners, and sometimes even to pay the whole, or a part, of the freight, if the ship yielded to them, and they were suffered to take out the cargo without resistance. To prevent this practice, a statute was passed so long ago as the reign of *King Charles the Second,* in the preamble whereof this practice is recited, and by which the master of any vessel of a burthen not less than

(l) These are deprived of the *benefit of clergy* by 28 *Hen.* 8. *c.* 15. *sect.* 3.

(m) See *Hanseatic* Ordinance, Art. 35, 36, 37, and *Roccus,* Not. 70.

than two hundred tons, and furnished with sixteen guns, is forbidden to yield his cargo to pirates of any force, without resistance, on pain of being rendered incapable to take charge of any *English* vessel afterwards. And if the ship is released, and any thing given by the pirates to the master, such gift and his share of the ship are to go to the owners of the goods. And any ship of less burthen or force than before mentioned, is forbidden to yield to a *Turkish* pirate, not having double her number of guns, without fighting *(n)*. An extraordinary instance of the courage and skill, which the Legislature of those times attributed to *English* seamen, and which the exploits of succeeding generations have so often and so gloriously exemplified!

10. By the same statute it is enacted, "That if the "mariners or inferior officers of any *English* ship, laden "with goods and merchandizes as aforesaid, shall decline "or refuse to fight and defend the ship, when they shall "be thereunto commanded by the master or commander "thereof, or shall utter any words to discourage the other "mariners from defending the ship, that every mariner "who shall be found guilty of declining or refusing as "aforesaid, shall *lose all his wages* due to him, together with "such goods as he hath in his ship, and suffer imprison-"ment, not exceeding the space of *six* months, and shall "during such time be kept to hard labour for his or their "maintenance *(o)*." And the before-mentioned statute of *William the Third*, has made the offence of voluntarily yielding up to pirates a capital crime *(p)*.

11. The Legislature however has not been less studious to reward and provide for deserving mariners, than to punish the fraudulent or the fearful.

To

(n) 16 *Car.* 2. c. 6. and 22 & 23 *Car.* 2. c. 11.

(o) 22 & 23 *Car.* 2. c. 11. *s.* 7.

(p) 11 & 12 *W.* 3. c. 7. *s.* 9.

To this purpose it has been enacted *(q)*, "That when any "*English* ship shall have been defended against any "pirates, enemies, or sea-rovers by fight, and brought to "her designed port, in which fight any of the officers or "seamen shall have been killed or wounded, it shall and "may be lawful to and for the Judge of His Majesty's "High Court of Admiralty, or his Surrogate in the port "of *London*, or the mayor, bailiff, or chief officer in the "several out-ports of this kingdom, upon the petition of "the master or seamen of such ship, so defended as afore-"said, to call unto him four or more good and substantial "merchants, and such as are no adventurers or owners of "the ship or goods so defended, and have no manner of "interest therein, and by advice with them to raise and "levy upon the respective adventurers and owners of the "ship and goods so defended, by process out of the said "Court, such sum or sums of money, as himself and the "said merchants by plurality of voices shall determine "and judge reasonable, not exceeding *two pounds per* "*centum* of the freight, and of the ship and goods so de-"fended, according to the first cost of the goods; which "sum or sums of money, so raised, shall be distributed "among the captain, master, officers and seamen of the "said ship, or widows and children of the slain, according "to the direction of the Judge of the said Court, or his "Surrogate in the port of *London*, or the mayor, bailiff, or "chief officer in the several out-ports of this kingdom, with "the approbation of the merchants aforesaid, who shall "proportion the same according to their best judgment "unto the ship's company as aforesaid, having special "regard unto the widows and children of such as shall "have been slain in that service, and such as have been "wounded or maimed."

12. By

(q) 11 & 12 *W.* 3 *c.* 7. *s.* 11. See also 22 & 23 *Car.* 2. *c.* 11. *s.* 10. By the *Hanseatic* Ordinance, art. 53, a seaman disabled in defending a ship against rovers is to be maintained during his life, at the common charge of the concerned in a general average. And the *Hanseatic* Ordinance of the year 1614, is to the same effect. Tit. 14. art. 3.

12. By two subsequent statutes, seamen in the merchants service disabled in fight against a *pirate (r)*, or *enemy (s)* were to be admitted into and provided for in *Greenwich Hospital*, the great asylum for decayed and disabled seamen belonging to the royal navy; but that hospital being found insufficient for this addition to the primary objects of its institution, another national establishment was erected in the reign of George the Second *(t)*, "*for the relief and* "*support of maimed and disabled seamen, and the widows and* "*children of such as shall be killed, slain, or drowned, in the* "*merchants service.*" To provide a fund for this charitable institution every person serving in any merchant ship, or other private ship or vessel, belonging to any of his Majesty's subjects in *England*, (except apprentices under the age of eighteen, persons employed in boats upon the coasts in taking fish, which are brought fresh on shore, or in boats within rivers, or open boats on the coast, and pilots, and except persons employed in the service of the *East India Company*, and who are not entitled to the benefit of this institution, being provided for by a fund established by the Company) pays *sixpence per month*, which is to be deducted out of his wages by the master, and by him paid over to the persons appointed under the authority of the Act, at the port to which the ship belongs, before she shall be allowed to clear inwards *(u)*. For the management and distribution of this fund, a corporation is created, composed chiefly of eminent merchants, with power to purchase land and erect an hospital, and to provide for seamen rendered incapable of service by sickness, wounds, or other accidental misfortunes, and decrepit and worn out by age, either by receiving them into the hospital, or by pensions, and also to relieve the widows and children of seamen killed or drowned in the service, provided the children are not of the

(r) 8 *Geo.* 1. *c.* 24.
(s) 8 *Geo.* 2. *c.* 29. *sect.* 10.
(t) 20 *Geo.* 2. *c.* 38.
(u) 20 *Geo.* 2. *c.* 38. *s.* 17, 18, & 23.

the age of fourteen years; or, if of that age and upwards, are incapable of getting a livelihood by reason of lameness, blindness or other infirmity, and are proper objects of charity; and to make reasonable allowances to those, who shall lose an eye or limb, or be otherwise hurt or maimed in fighting, defending, or working their ships, or doing any other duty in their service, in proportion to their hurt, so far forth as the income and revenues of the charity will extend, for these purposes *(x)*. But no person is to be provided for as a worn-out seaman, who has not been employed in the merchant service *five* years, and paid the contribution *(y)*. And in providing for this class, a preference is to be given to such as have served longest and contributed most *(z)*.

And in order to ascertain the times of service and payment of the contribution, the master must keep a muster-roll of the persons employed in the ship, and before its departure deliver a duplicate to the collector of these duties at the port; and during the voyage enter the time and place of discharge, quitting, and desertion, and of receiving other persons on board, and of any hurt, damage, death, or drowning; of which he must also deliver a duplicate at his return, under the penalty of £.20 *(a)*: to the truth whereof he may be examined upon oath by the collector *(b)*. And in case any person employed on board any ship or vessel shall, in doing his duty on shore or on board, break an arm or leg, or be otherwise hurt or maimed, he is to be properly relieved until sufficiently recovered to be sent to the place to which the ship belongs *(c)*.

These are the principal objects of this excellent institution: several provisions for carrying them into effect are contained in the statute, of which the detail would be improper for this place.

13. By

(x) 20 *Geo.* 2. *c.* 38. *s.* 1 & 2.
(y) Id. *sect.* 3.
(z) Id. *sect.* 32.
(a) 20 *Geo.* 2. *c.* 38. *s.* 20.
(b) Id. *sect.* 21.
(c) Id. *sect.* 33.

13. By the ancient marine ordinances, if a mariner falls sick during a voyage, or is hurt in the performance of his duty, he is to be cured at the expence of the ship, but not if he receives an injury in the pursuit of his own private concerns *(d)*.

14. If by shipwreck, capture, or other unavoidable accident, any seafaring men or boys, subjects of *Great Britain*, are cast away in foreign parts, the governors, minister, and consuls appointed by his Majesty, or, where none such are resident, two or more *British* merchants there residing, are required to provide for and subsist them, at the rate of *sixpence per day*, for which they are to send bills with proper vouchers to the commissioners of the navy, and to put them on board the first ship belonging to his Majesty that arrives there, or within a convenient distance; and in case no such ship shall be found, to send them on board such merchant ships bound for *Great Britain* as shall be in want of men: and if neither case happens within a convenient time, to provide them a passage homeward in the first merchant ship bound for *Great Britain*, of which the master is bound to receive not exceeding *four* persons for every one hundred tons of his ship's burthen; and he is to be paid *sixpence per day* by the commissioners of the navy for such of them as he did not want toward his own complement of men *(e)*.

15. If a master of a merchant ship being abroad shall force any man on shore, or wilfully leave him behind in any of his Majesty's plantations, or elsewhere, or refuse to bring home again all such of the men he carried out with him as are in a condition to return, when he shall be ready to proceed in his homeward-bound voyage, every such master shall, being thereof legally convicted, suffer *three* months

(d) Laws of *Oleron*, art. 6. of *Wisbuy*, art. 18. of the *Hanse Towns*, art. 39, &c. See *Cleirac* on the laws of *Oleron ubi supra*.
(e) 1 *Geo.* 2. *stat.* 2. *c.* 14. *s.* 12.

months imprisonment *(f)*. And by a subsequent statute, the offence may be prosecuted by indictment or information, at the suit of the Attorney General, in the Court of King's Bench at *Westminster*, and the offence may be alleged to have been committed at *Westminster*, in the county of *Middlesex (g)*.

(f) 11 & 12 *Wm.* 3. *c.* 7. *s.* 18. *(g)* 58 *Geo.* 3. *c.* 38.

CHAPTER THE FIFTH.

OF PILOTS.

THE name of pilot, or steersman, is applied either to a particular officer, serving on board a ship during the course of a voyage, and having the charge of the helm and of the ship's route; or to a person taken on board at a particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port. The *French* Ordinance contains several regulations calculated to obtain the necessary skill and experience in persons of the first description *(a)*. In this country there is no particular provision relating to them, and many ships are navigated without an officer of this description, the master taking upon himself the charge of the helm, and the conduct of the vessel.

2. Pilots of the *second* description are established at several places in this country by ancient charters of incorporation *(b)*. And *in general* the master of a ship engaged in foreign trade must put his ship under the charge of such a pilot, both in his outward and homeward voyage, within the limits of every such establishment *(c)*. An account of these

(a) Liv. 2. Tit. 4. *Du Pilote.*

(b) Pilotage from *Dover*, *Deal*, and the *Isle of Thanet*, up the rivers *Thames* and *Medway*, was regulated by *statutes* 3 *Geo.* 1. *c.* 13; 7 *Geo.* 1. *c.* 21, and 43 *Geo.* 3. *c.* 152. revived and continued by 47 *Geo.* 3. *stat.* 2. *c.* 71. P. L. & P. Pilotage *down* the *Thames*, and through the *North Channel* to or by *Orfordness*, and round the *Long-Sand-Head* into the *Downs*, and down the *South Channel* into the *Downs*, and from or by *Orfordness* up the *North Channel* and the *Thames* and *Medway*, by 5 *Geo.* 2. *c.* 20. Pilotage into and out of the port of *Liverpool*, is regulated by 37 *Geo.* 3. *c.* 78. and the port of *Hull* by 39 & 40 *Geo.* 3. *c.* 10. P. L. & P.

(c) *Law* v. *Hollingsworth*, 7 Ter. Rep. K. B. 160. 52 *Geo.* 3. *c.* 39. *s.* 59.

these establishments, and of the parts to which they relate, would be improper in a general treatise; and masters of vessels may easily acquaint themselves with the regulations on this subject relating to the particular navigation in which they are employed.

Pilotage up and down the rivers *Thames* and *Medway* was regulated by several statutes *(d)*, which were much improved by a temporary Act passed in the 48th year of his late Majesty's reign *(e)*: but all the regulations relating to these districts have since been consolidated into one Act of Parliament *(f)*, which also contains some general provisions applicable to all parts of the kingdom. The more important of these provisions will be shortly mentioned in the present chapter, and the Act, with the exception of the tables of rates, will be printed at large in the *Appendix*.

3. One of the former statutes which required an established pilot to be taken on board to conduct ships from *Dover, Deal,* or the *Isle of Thanet,* up the *Thames* or *Medway,* contained an exception, allowing "the master or mate "of any ship or vessel, or part-owner, residing at *Dover,* "*Deal,* or the *Isle of Thanet,*" to conduct his own ship from any of those places up the said rivers *(g)*. The meaning of this clause appears sufficiently obvious; yet it was once contended, that a master and part-owner, not resident at either of those places, might pilot his own ship up the *Thames,* on his return from a foreign voyage to *London.* But the Court of King's Bench thought the meaning of the Legislature to be otherwise, and determined that the master was subject to the penalty imposed by the statute *(h)*. The new statute allows the persons before mentioned to conduct their own ships up or down the said rivers, or into

(d) Ante, *note (b.)* p. 148.

(e) 48 *Geo.* 3. *c.* 104.

(f) 6 *Geo.* 4. *c.* 125. printed in the Appendix, and repealing the statute 52 *Geo.* 3. *c.* 39. which was also a consolidating Act, and contained some general provisions.

(g) 3 *Geo.* 1. *c.* 13.

(h) *Kemler* v. *Blanchard,* 2 Blac. 690. 5 Burr. 2602.

into or out of any port or place within the jurisdiction of the *Cinque Ports (i)*.

4. But both the before-mentioned statutes and that *(k)* which regulated pilotage *down* the river *Thames*, applied only to ships in the course of their navigation. And the Court of King's Bench decided that the *mate* of a ship engaged in the *Lisbon* trade, who steered the ship, which at the time was not quite cleared of her homeward cargo, and had a Custom-house officer on board, down the river *Thames* from *Horsleydown New Stairs* to *Cherry Gardens*, being about half a mile, and from thence to *Fountain Stairs*, was not subject to the penalty; for otherwise the station of a ship could not be changed for the purpose of delivering or receiving goods at different wharfs without the expence of pilotage *(l)*. In like manner, where a ship had been conducted by a regular pilot up the river *Thames* to *Limehouse-hole*, and was left by him, and afterwards moored there, but being forced by the wind upon the mud, lay four days in a bad situation, and it becoming dangerous for her to remain there till the tide should ebb again, she was conducted by a *waterman* about a mile and a half further up the river; the Court referring to its former decision, and considering the voyage in this case to have been ended, when the ship was left at *Limehouse* by the pilot, determined that the waterman was not subject to the penalty *(m)*.

By the new statute it is expressly provided, "That when "any ship or vessel shall have been brought into any "port

(i) 6 *Geo.* 4. c. 125. *s.* 62.
(k) 5 *Geo.* 2. c. 20.
(l) *Rex* v. *Lambe*, 5 Ter. Rep. K. B. 76. and Nolan's Rep. 156.
(m) *Rex* v. *Neale*, 8 Ter. Rep. K. B. 241. In this case it was stated, that the ship might have been removed to the pier either immediately above or below *Limehouse-hole*, and have been perfectly safe without going any further: And therefore the case was not within the *seventh* section of 3 *Geo.* 1. c. 13. which provides that the Act shall not extend to hinder any person from assisting a ship in distress at any time.

" port or ports in *England*, by any pilot duly licensed, " nothing therein contained shall extend or be construed " to extend to subject to any penalty the master or mate, " or other person belonging to such ship or vessel, and " having the command thereof, or if in ballast, any other " person or persons appointed by any owner or master, or " agent of the owner thereof, afterwards removing such " ship or vessel in such port or ports, for the purpose of " entering into, or going out of any dock, or for changing " the moorings of such ship or vessel *(n)*."

5. The charge of pilotage is regulated at different places by usage or by statute, and generally increases in proportion to the depth of water which the vessel draws. It was determined that this charge under the old statutes, where the service was performed in a river within the body of a county, could not be recovered by a suit in the Court of Admiralty *(o)*. The rates prescribed by the statute 3 *Geo.* 1. *c.* 13. have been held applicable only to the Trinity-house pilots, and not binding upon another person, who in their absence takes the charge of a ship in pursuance of the proviso in the third section of that statute *(p)*. These decisions may also apply to the new statute *(q)*.

6. By the new statute, all sums which shall become due to any licensed pilot for the pilotage of any ship or vessel except ships and vessels not having *British* registers, trading to or from the port of *London*, " may be recovered " from the owners or masters of such ship or vessel, or " from the consignees or agents thereof, who shall have " paid or made themselves liable to pay any other charge " for the ship or vessel in the port of her arrival or deli- " very as to pilotage inwards, and in the port from whence " she shall clear out or sail, as to pilotage outwards;" and may be levied in like manner according to the amount as any

(*n*) 6 *Geo.* 4. *c.* 125. *s.* 63.

(*o*) *Ross* v. *Walker*, 2 Wils. 264.

(*p*) The NELSON, *Main.* 6 Rob. A. R. 227.

(*q*) 6 *Geo.* 4. *c.* 125.

any penalty may be recovered and levied by virtue of the Act, demand thereof being made in writing at least *fourteen* days before such levy *(r)*. And the master or other person having the charge of ships or vessels, *not having British registers*, which shall enter into or sail from the port of *London*, and which are by law required to be piloted by persons licensed by the corporation of the Trinity-house, or the consignees or agents thereof, are to pay at the Trinity-house in *London*, to persons appointed by the corporation of Trinity-house, the full pilotage inwards and outwards; viz. as to pilotage outwards, the amount for the distance which the ship is by law required to be piloted; as to pilotage inwards, where a pilot shall have been on board, the amount for the distance piloted by him if greater than that which she shall be required to be piloted, if less, or if no pilot shall have been on board, the amount for the distance which she was by law required to be piloted: the pilotage inwards may be levied, &c. upon the master or other person in charge, consignee, or agent, in the same manner as in the case of ships, *having British registers*, if such pilotage inwards be not paid within *fourteen* days from the day of the ships reporting inwards. But the corporation of the Trinity-house are enabled to make regulations for the relief of such ships and vessels not having *British* registers as may come to the port of *London* with fish, corn, or other provisions *(s)*.

" The consignees or agents of any ship or vessel are by " this Act authorized and empowered to retain in their " hands respectively out of any monies which they may " have received or shall thereafter receive for, or on account " of, such ship or vessel, or the owner or owners thereof, so " much as shall be sufficient to pay and discharge such " pilotage and any expences attending the same *(t)*."

If the officer of a king's ship, or master, or other person having

(r) 6 *Geo.* 4. *c.* 125. *s.* 44.
(s) Id. *sect.* 46 & 51.
(t) Id. *sect.* 45.

having the command of any other ship or vessel, takes a pilot to sea, beyond the limits of his district, without his free consent, except under circumstances of absolute and unavoidable necessity, the pilot is entitled over and above his pilotage, to receive 10*s.* 6*d.* per day, to be computed from, and inclusive of the day next after the day on which the vessel passes the limit to which he was engaged, until he shall be returned to the place where he was taken on board, or until he shall have been discharged from the vessel a sufficient time to have enabled him to return there *(u)*.

7. Penalties not exceeding £. 20. are to be recovered before a Justice by prosecution within *six* months; and penalties *above* £. 20. by action of debt in any of the Courts of Record at *Westminster*, to be commenced within *twelve* months; but if it shall be made to appear, as soon after as the circumstances of the case will admit, that the commencement of the prosecution or action has been delayed by reason of the absence of any party or parties, whether offending or complaining, or of any necessary witness, then upon such circumstances being stated by affidavit, made before any Judge of any of his Majesty's Courts of Record at *Westminster*, any such Judge may order or authorize the commencement of the prosecution or action, within such further time as he shall think fit to limit *(x)*.

It is however provided by the statute, that nothing therein contained shall affect or impair the jurisdiction of the Court of Load-manage, or High Court of Admiralty *(y)*, nor the right of the City of *London (z)*, nor (in general) any separate jurisdictions established under any Act of Parliament or charter *(a)*.

8. Vessels bound to the *Thames*, and which shall repair to any place appointed for the performance of quarantine, are

(u) 6 *Geo.* 4. *c.* 125. *s.* 38.
(x) Id. *sect.* 76 & 77.
(y) Id. *sect.* 87.
(z) Id. *sect.* 88.
(a) Id. *sect.* 89.

are to pay the full charges of pilotage up to that place, and also the further sum of 8*s*. per day, for the days the pilot shall be obliged to remain on quarantine *(b)*.

9. The master of any ship or vessel who shall act himself as a pilot, or employ any unlicensed person, or licensed person acting out of his limits, or beyond the extent of his qualification, after a licensed and qualified pilot shall have offered himself, or made signal for that purpose, shall forfeit double the sum which would have been demandable for the pilotage; and if the Trinity-house, or Lord Warden of the Cinque Ports, as the case may be, shall think it proper, and certify in writing, he shall also forfeit £. 5. for every fifty tons burthen of his ship *(c)*.

A master of a ship coming from the westward to *London*, having performed quarantine at *Standgate* Creek, and being about to quit that place, discharged the Cinque Port pilot who had conducted the vessel thither, and was desirous of proceeding with her, and then hoisted a flag for a pilot from *Sheerness*, and moved his ship onward toward *London*, but within the limits of the port of *Rochester*, for the space of a mile, before a pilot from *Sheerness* came on board: It was held, that the master was liable to the penalty under the thirty-fourth section of 52 *Geo*. 3. *c*. 39. which for this purpose does not seem to differ from the section of the new Act, which I have last abridged *(d)*. But in order to subject the master to a penalty for continuing an unlicensed pilot, after a pilot duly licensed and qualified offers to take charge of the ship, it must appear that such offer was made to or in the presence of the master *(e)*. I presume, however, that if the master should have given orders to his mate or other person not to receive a pilot, an offer to such person would be considered as an offer to the master himself.

A like

(b) 6 *Geo*. 4. *c*. 125. *s*. 41.
(c) Id. *sect*. 58.
(d) *Thornton* v. *Boland*, 2 Bingham, 219.
(e) *Peake*, qui tam v. *Carrington*, 2 B & B. 399. and 5 B. Moore, 176.

10. A like forfeit of double the sum which would have been demandable for the pilotage is to be paid by the person in command of a ship coming from the westward and bound to any place in the *Thames* or *Medway*, who, not having a duly qualified Cinque Port pilot on board, shall not on the arrival of his vessel off *Dungeness*, and until she shall have passed the south buoy of the *Brake*, or have been at anchor for one hour, display the usual signal for a pilot; and if any duly qualified Cinque Port pilot shall be within hail, or approach him within half a mile, with the proper distinguishing flag flying in his vessel or boat, shall not by all practicable means facilitate such pilot getting on board, and give the charge of piloting the vessel to him; or who shall, within the limits aforesaid, decline to take on board the first duly qualified Cinque Port pilot who shall offer, or to give charge of the vessel to such pilot; but if any ship coming from the westward, and bound to any place in the said rivers, shall anchor any where in the *Downs* between the *South Foreland*, and the line drawn from *Sandown Castle* to the south buoy of the *Brake*, having any licensed pilot, other than a duly qualified Cinque Port pilot on board, it shall not be necessary to display the signal any longer than for one hour next after the ship shall have anchored; and at any time before the ship shall have been at anchor one hour with the signal flying, any duly qualified Cinque Port pilot, may repair on board, and take charge of the ship up the said rivers *(f)*.

A decision of the Court of Common Pleas on the eleventh section of 52 *Geo.* 3. is equally applicable to this section of the new Act. The judgment is this; that the penalties for not taking a pilot on board as soon as the vessel passes *Dungeness*, are to be ascertained by the voyage, which she is *about* to perform, and which the Act directs she shall not perform without a pilot; if, therefore, a vessel be bound for the river, the penalties imposed are not on the pilotage due from *Dungeness* to the *Downs*, but on

(f) 6 *Geo.* 4. *c.* 125. *s.* 19.

on that which would be due on the ship's arrival at her *ultimate* place of destination in the river *(g)*.

11. The master however of the following vessels may pilot the same so long as he is not assisted by any unlicensed pilot or other person than the ordinary crew: viz. "The "master of any collier, or of any ship or vessel trading "to *Norway*, or to the *Cattegat* or *Baltic*, or round the "*North Cape*, or into the *White Sea*, on their inward or out- "ward voyages, or of any constant trader inwards, from "the ports between *Boulogne* inclusive, and the *Baltic* "(all such ships or vessels having *British* registers, and "coming up either by the *North Channel*, but not other- "wise), or of any *Irish* trader using the navigation of "the rivers *Thames* and *Medway*, or of any ship or vessel "employed in the regular coasting trade of the kingdom, "or of any ship or vessel wholly laden with stone, from "*Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, and being the "production thereof, or of any ship or vessel, not exceeding "the burthen of sixty tons, and *having a British register*, "[or not exceeding the burthen of sixty tons, and *not hav- "ing a British register*, if authorized so to do, by an order "of the Privy Council *(h)*]; or of any other ship or vessel "whatsoever, whilst the same is within the limits of the "port or place to which she belongs, the same not being "a port or place, in relation to which particular provision "hath heretofore been made by any Act or Acts of Par- "liament, or by any charter or charters for the appoint- "ment of pilots *(i)*."

As to *Irish* traders and coasting vessels, the words in the former Act 52 *Geo.* 3. *c.* 39. *s.* 2. were different, and gave rise to two decisions; the words were, "All coasting "vessels, and all *Irish* traders, using the navigation of the "river *Thames* as coasters:" the decisions were, 1st. That the phrase, "all coasting vessels," is a general exemption, extending

(g) *Mackie* v. *Landon*. 6 Taunton, 256. 1 Marsh, 585.

(h) 6 *Geo.* 4. *c.* 125. *sect.* 60.

(i) Id. *sect.* 59.

extending to all vessels in the coasting trade, and is not restricted by the subsequent words to such coasting vessels only, as navigate the river *Thames* as coasters *(k)* 2d. That a vessel not engaged in the corn trade, and which, during the eight preceding years, had been employed as a trader between *Belfast* and *London*, except one voyage when she went to *Liverpool*, and which at the time in question, was laden with a general cargo, proceeding down the river *Thames* from *London* to *Belfast*, did not come within this exemption *(l)*.

By another statute passed in the same year, it is enacted that all trade by sea from any one part of the United Kingdom to any other part thereof, or from one part of the *Isle of Man*, to another thereof, shall be deemed to be a coasting trade, and all ships while employed therein shall be deemed to be coasting ships; and that no part of the United Kingdom however situate with regard to any other part thereof, shall be deemed in law with reference to each other, to be parts beyond the seas in any matter relating to the trade or navigation or revenues of this realm (*m*).

12. It is also provided, "That this Act shall not extend "or be construed to extend to subject the master or "owner of any ship or vessel, to any of the penalties of "this Act, for employing any person or persons whomsoever, as a pilot or pilots, in and for the assistance of "such ship or vessel, whilst the same shall be in distress, "or in consequence thereof, or under any circumstances, "which shall have rendered it necessary for such owne "or master to avail himself of the best assistance which "at the time could be procured *(n)*."

13. The Act enacts, "That no owner or master of any "ship or vessel shall be answerable for any loss or damage "which

(k) Usher (qui tam,) &c. v. *Lyon*, 2 Price, 118.
(l) Davison v. *Mekibben*, 3 B. & B. 112. and 6 B. Moore, p. 387.
(m) 6 *Geo.* 4. *c.* 107. *s.* 100.
(n) 6 *Geo.* 4. c. 125. s. 61.

" which shall happen to any person or persons whatsoever, " from or by reason or means of no licensed pilot, or of " no duly qualified pilot being on board thereof, unless " it shall be proved that the want of such licensed or of " such duly qualified pilot respectively shall have arisen " from any refusal to take such licensed or qualified pilot " on board, or from the wilful neglect of the master of " such ship or vessel in not heaving to, or using all " practicable means, consistently with her safety, for the " purpose of taking on board thereof any pilot who shall " be ready and offer to take charge of the same *(o)*."

And " nothing in this Act contained shall extend or " be construed to extend to make the owner of any ship or " vessel liable in any such case, for any loss or damage " beyond the value of such ship or vessel, and her appur- " tenances, and the freight due or to grow due for and " during the voyage wherein such loss or damage may " happen or arise *(p)*."

And it is also enacted, " That no owner or master of any " ship or vessel shall be answerable for any loss or damage " which shall happen to any person or persons whomsoever, " from or by reason or means of any neglect, default, in- " competency or incapacity of any licensed pilot acting in " the charge of any such ship or vessel, under or in pur- " suance of any of the provisions of this Act, where and " so long as such pilot shall be duly qualified to have the " charge of such ship or vessel, or where and so long as " no duly qualified pilot shall have offered to take charge " thereof *(q)*."

And it is provided, " That nothing in this Act contained " shall extend or be construed to extend to deprive any " person or persons of any remedy or remedies upon any " contract of insurance, or of any other remedy what- " soever, which he or they might have had if this Act had " not been passed, by reason or on account of the neglect, default,

(o) 6 *Geo.* 4. *c.* 125. *s.* 53. *(p)* Id. *sect.* 54. *(q)* Id. *sect.* 55.

" default, incompetency, or incapacity of any pilot duly " acting in the charge of any ship or vessel, under or in pur- " suance of any of the provisions of this Act, or by reason " or on account of no pilot, or of no duly qualified pilot " being on board of any such ship or vessel, unless it shall " be proved that the want of a pilot, or of a duly qualified " pilot, shall have arisen from any refusal to take a pilot or " a duly qualified pilot on board, or from the wilful neglect " of the master of such ship or vessel in not heaving to, " or using all practicable means consistently with the safety " of such ship or vessel, for the purpose of taking on board " any pilot who shall be ready and offer to take charge of " such ship or vessel *(r)*."

It is also provided, that no pilot licensed under the Act, who shall have executed the bond therein directed, and shall be piloting within the limits specified in his licence any ship which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be answerable in damages to the party aggrieved beyond the amount of the penalty specified in the bond, and the pilotage payable to him in respect of the voyage on which the ship shall be, for any loss or damage happening by his neglect or want of skill *(s)*.

There was a decision in two cases by the Court of Common Pleas, upon the construction of the 30th section of the old Act; the decision was, that the owners of ships placed under the controul of pilots in pursuance of the Act, were not answerable for damage done to other vessels by collision, in the river *Thames (t)*. The language of the present Act appears to have been adopted with a view to take away the occasion of the doubt which existed in those two cases.

There was, however, a decision to the contrary, by Sir *William*

(r) 6 *Geo.* 4. *c.* 125. *s.* 56.
(s) Id. *sect.* 57.
(t) *Bennet* v. *Moita*, a *Portuguese* ship. 7 Taunton, 258. *Ritchie* v. *Bowsfield.* Id. 309.

William Scott, in a prior case of a foreign ship, reported 1 Dodson Ad. Rep. 467, which is not quoted or noticed in either of these two cases, and in which the Act of Parliament is not mentioned, though it can hardly have been unknown to that very learned Judge.

It should be observed, that the 55th and 56th sections of the last Act, mention the neglect, &c. of a pilot duly acting in the charge of a ship, under or in pursuance of any of the provisions of that Act. The words of the 30th section of the 52 Geo. 3. c. 39. are "a pilot *taken on board* of." But it may be doubtful, whether for the purpose of the question that is now to be mentioned, this difference of expression may be material. The question is, whether a ship is to be considered as under the management of the owners or of their servants, while she is in the charge of a local pilot duly licensed or appointed under the authority of any other Act of Parliament than this of the 6th Geo. 4. as of a *Hull* or *Liverpool* pilot. Two cases have been decided with respect to a *Liverpool* pilot, not easily reconcileable with each other, in all that was said by the learned judges. I allude to the cases of the *Attorney General* v. *Case* and others, 3 Price, 302; and *Carruthers* v. *Sydebotham*, 4 M. & S. 77. The case in the King's Bench *(u)* was argued and determined in the interval between the argument and judgment of the case in the Exchequer, *(x)* in which the judgment of the Court was pronounced by Lord Ch. Baron *Thompson*, after a considerable lapse of time. It may be inferred from the two cases considered together, that where the master is bound by Act of Parliament, under a penalty to place his ship in the charge of a pilot, and does so accordingly, the ship is not to be considered as under the management of the owners or their servants, but when it is in the election or discretion of the master to take a pilot or not, and he thinks fit to take one, the

(u) Carruthers v. *Sydebotham.*

(x) Attorney General v. *Case & others.*

the pilot so taken is to be considered as a servant of the owners. To what extent, and under what particular circumstances the master is thus bound to place his vessel under the charge of a *Liverpool* pilot, may (in many cases at least) be considered as undecided. The case in the King's Bench arose upon a ship recently arrived in the port of *Liverpool*, to which an accident happened before she had been moored in safety, whereby goods on board were damaged, and the *underwriters* were held answerable. The case in the Exchequer arose on a ship outward bound, which had been at anchor for a considerable time in the river *Mersey*, and was not proceeding on her voyage, and the *owners* were held answerable.

Under the 52 *Geo.* 3. it was held, that an action for a penalty could be brought only in the county wherein an offence in the river *Thames* occurred *(y)*.

This would in many instances be very difficult, and in some perhaps impracticable, and the inconvenience has been remedied by the last Act, *(z)* which authorizes the action to be brought either in such county, or in *Middlesex* or *London*.

(y) Barber (qui tam) v. Tilson, 3 M. & S. 429.

(z) Sect. 86.

PART THE THIRD.

OF THE CARRIAGE OF GOODS IN MERCHANT SHIPS.

CHAPTER THE FIRST.

OF THE CONTRACT OF AFFREIGHTMENT BY CHARTER-PARTY.

1. THE contract by charter-party, of which it is here intended to treat, is, as I have before observed, a contract, by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. A ship may indeed be let for other purposes, as to be employed in warfare, or the fishing, coasting, or other trade, under the entire management of the hirer; or by way of mortgage, reserving at least a temporary right of management to the letter; or one part-owner may let his share to another. But contracts of this nature do not form the subject of the present enquiry.

The term charter-party is generally understood to be a corruption of the Latin words *charta-partita (a)*; the two

(a) *Hargrave*'s note on 1st Inst. 229.

Pothier, traité de charte-partie, num. 1. gives the same etymology of this word from *Boerius*, but with a different explanation. "It was "formerly usual," says *Boerius*, "in *England* and *Aquitaine*, to "reduce contracts into writing on "a chart, divided afterwards into "two parts from top to bottom, of "which each of the contracting "parties took one, which they "placed together and compared, "when

two parts of this and other instruments being usually written in former times on one piece of parchment, which was afterwards divided by a straight line cut through some word or figure, so that one part should fit and tally with the other, as evidence of their original agreement and correspondence, and to prevent the fraudulent substitution of a fictitious instrument for the real deed of the parties. With the same design indentation was afterwards introduced, and deeds of more than one part thereby acquired among English lawyers the name of indenture. This practice of division however has long been disused, and that of indentation is become a mere form.

I propose in the present chapter, to consider the modes in which this contract may be made, and to mention the usual stipulations contained in a charter-party, and some particular covenants, that have furnished occasion for the decision of a Court of Justice: reserving the consideration of the general duties that arise, as well out of the contract for conveyance in a general ship, as of this species of contract, for distinct chapters hereafter.

2. This instrument, when the ship is let at the place of the owners residence, is generally executed by them, or some of them, (and frequently by the master also) and by the merchant, or his agent. In a foreign port, it must of necessity, if it be by deed under seal, be executed by the master only, and the merchant or his agent, unless the parties have an agent resident in such port, authorized to this purpose, by deed or letter of attorney under seal.

I have before observed, that the execution of a charter-party by the master, although said to be done on behalf of the owners, does not furnish a direct action, grounded upon

" when they had occasion to know " the terms of their contract." If from this account we are to understand that the contract was only once written, and the paper or parchment afterwards cut in two, the practice must have been very inconvenient, as neither party could, in the absence of the other, inform himself of the stipulation he had engaged to perform.

upon the instrument itself, against them. This depends upon a technical rule of the law of *England (b)*, applicable as well to this as to other cases, and not affected by the mercantile practice of executing deeds for and in the name of absent persons: the rule of the law of *England* being, that the force and effect, which that law gives to a deed under seal, cannot exist, unless the deed be executed by the party himself, or by another for him, in his presence, and with his direction; or, in his absence, by an agent authorized to do so by another deed: and in every such case, the deed must be made and executed in the name of the principal *(c)*. The agent indeed, either of the owner or merchant, may, and sometimes does, execute a charter-party, and covenant in his own name for performance by his principal, so as to bind himself to answer for his principal's default, by force of the deed. And in an action to recover freight or demurrage, claimed in pursuance of a charter-party by deed, it has been held, the declaration must be specially framed on the deed itself *(d)*. If such a charter-party be made between the master and the merchant, in pursuance of which, goods are delivered to the merchant and his partners, the freight cannot be recovered in an action upon the case, brought by the owners against the merchant *(e)*. So if the owner execute a deed to the merchant, containing the usual covenant for a right delivery of the cargo, he cannot be sued by the merchant for not delivering

(b) Harrison v. *Jackson & others*, 7 Term Rep. 207. and *Horsley* v. *Rush & another*, (the case of a charter-party) there cited.

(c) If *C. D.* by a proper deed authorize *A. B.* to execute a bond or other deed for him, *A. B.* may do this either by writing "*C. D.* by *A. B.* his attorney," or by writing "*A. B.* for *C. D.*" provided he delivers the instrument as the deed of *C. D. Wilks & another* v. *Backe*, 2 East, 142.

(d) Atty v. *Parish*, 1 B. & P. New Rep. 104. But query of this decision as to an action brought by and against the parties to the deed, whether the declaration may not be framed in debt generally, and the deed given in evidence. See the opinion of *Bayley*, J. in the case of *Tilson* v. *the Warwick Gas Light Co.* 4 B. & C. 968.

(e) Schack & another v. *Anthony*, 1 M. & S. 573.

delivering it, in an action upon the case, grounded on the bill of lading signed by the master *(f)*. But where a charter-party under seal was made by the master in that character, with merchants who did not know that he was also a part-owner in the ship, as in fact he was; it was held, that they might sue him and the other owners in an action upon the case for a breach of such general duties as were not inconsistent with the stipulations of the charter-party, such as the not providing necessaries for the voyage, and employing a negligent and unskilful master *(g)*. And whether the instrument be under seal or not, an action at law grounded upon it must be brought in the name of the party to it, and not in the name of another, to whom he may have assigned his interest. And therefore the purchaser of a ship previously chartered cannot sue for the freight earned under the charter-party in his own name *(h)*, although payment to him will be a good discharge to an action brought in the name of the seller, at least if the purchase be made before the ship sails on the voyage *(i)*. In like manner, where goods were shipped, in pursuance of a charter-party made by the master with one *Partridge*, and whereby he engaged to receive a cargo of fruit from the agents or assigns of *Partridge*, and deliver the same to him or his assigns; and upon the shipment he signed a bill of lading, stating the goods to have been shipped by one *Strange*, by order of *Rovedino* and *Moores*, to be delivered to the order of *Moores*, and freight to be paid according to the tenor of the contract of affreightment; it was held that *Moores* could not maintain an action against the master for negligence in the stowing of the fruit *(k)*.

Another

(f) Hunter v. *Princep*, 10 East, 378.

(g) Leslie v. *Wilson & others*, 3 B. & B. 171 and 6 B. Moore, 415.

(h) Splidt v. *Bowles*. 10 East, 279. The charter-party appears to have been under seal. *Morrison* v. *Parsons*, 2 Taunton, 407. The charter-party was not under seal.

(i) Morrison v. *Parsons*, ubi supra.

(k) Moores v. *Hopper*, 2 B. & P. New Rep. 411. It does not appear by the report whether the charter-party was by deed or simple contract; the declaration seems not to have noticed the charter-party.

Another technical rule of the law of *England*, applicable also to the contract by charter-party under seal, should be noticed in this place. If a charter-party is *expressed to be made between certain parties*, as between A. and B. owners of a ship, whereof C. is master of the one part, and D. and E. of the other part, and purports to contain covenants with C. nevertheless C. cannot bring an action in his name upon the covenants expressed to be made with him, nor give a release of them, even although he seals and delivers the instrument *(l)*. But if the charty-party is *not expressed to be made between parties*, but runs thus: This charter-party indented witnesseth, that C. master of the ship *W.* with consent of A. and B. the owners thereof, lets the ship to freight to E. and F. and the instrument contains covenants by E. and F. to and with A. and B.; in this case A. and B. may bring an action upon the covenants expressed to be made with them; although, unless they seal the deed, they cannot be sued upon it *(m)*. This latter therefore is the most proper form.

3. By this contract a ship is let for a voyage to one or more places: the freight is expressed to be a sum of money, for the entire ship, or an entire part of the ship, or for each ton or other portion of its capacity; and this sum is again either a gross sum for the whole voyage or voyages, or a particular sum for every month or week of the ship's employment; sometimes also the freight is expressed to be a certain sum for every ton, cask, or bale of goods put on board, in which case the merchant usually covenants not to put on board less than a specified number of tons, casks, or bales; and where the payment is to be by the ton of goods, it is usual and proper to add, "and so in pro-"portion for a less quantity than a ton," as it was formerly decided

(l) Scudamore v. *Vandenstene*, 2 Inst. 673. See also Lord *Ellenborough*'s judgment in *Storer* v. *Gordon & others*. 3 M. & S. 322. *Salter* v. *Kidgly*, Carthew. p. 76, and *Barclay* v. *Hardy*, K. B. Easter Term, 7 *Geo.* 4.

(m) Cooker v. *Child*, 2 Lev. 74, and see *Gilby* v. *Copley*, 3 Lev. 138.

decided in a case where these words were omitted, that the owner could recover nothing for a hogshead *(n)*. These variations in the mode of paying the freight have given rise to some questions and decisions on that article, which will be more properly noticed in the chapter on freight.

4. The merchant, who has so hired a ship, may lade it either with his own goods, or if he has not sufficient, may take in goods of other persons; or he may wholly underlet the ship to another. By the *French* Ordinance, underletting at an advanced price is prohibited *(o)*; a wise regulation, though not adopted by our law, and perhaps not rendered necessary by the practice of our merchants. If it be necessary, a clause may easily be introduced into all charter-parties to prevent the practice.

5. The charter-party usually expresses the burthen of the ship *(p)*, and by the *French* Ordinance it is required to do so *(q)*. A mistake in the amount of the burthen, may in some cases be prejudicial to one party or the other. The *French* Ordinance provides that the master, who declares his ship to be of a burthen exceeding the truth, shall answer the merchant in damages, but that an error shall not be deemed to exist, unless it exceeds a *fortieth* part *(r)*. According to *Molloy*, if a ship be freighted by the ton, and found of less burthen than expressed, the payment shall be only for the real burthen *(s)*. And if a ship be freighted for *two hundred* tons, or *thereabouts*, the addition of *thereabouts*, says the same author, is commonly reduced to be *five* ton, more or less. Where a ship was described in a charter-party, as of the burthen of 261 tons or thereabouts, and the owner covenanted to receive at a foreign port, a full and complete cargo, and the merchant covenanted to load such full and complete cargo; the burthen of

(n) *Rea* v. *Burnis*, 2 Lev. 124.
(o) Liv. 3. tit. 3. *fret.* art. 27.
(p) *See* on this head *Straccha de navibus*, par. 3. num. 4. ad. 14. inclusive.
(q) Liv. 3. tit. 1. *Charte-parties*, art. 3.
(r) Liv. 3. tit. 3. *fret.* art. 4 & 5.
(s) *Molloy*, book 2. chap. 4. s. 8.

of the ship thus expressed, was held not to conclude the parties, and the merchant was held answerable upon this covenant for not having furnished a full cargo, although in fact he furnished as many as 261 tons, and it appeared that the ship was capable of carrying 400 tons of goods of the description mentioned in the charter-party, the representation of the burthen not appearing to have been fraudulently made *(t)*.

If, therefore, it is intended to confine the operation of a charter-party as to this matter, to the number of tons mentioned therein, or in the certificate of registry, care should be taken to do this, by some words properly suited to such purpose.

In the statute limiting the number of passengers to be conveyed in a ship, and perhaps in some others, it is expressly enacted, that "a ship shall be deemed and taken "to be of the tonnage described and set forth in her certi- "ficate of registry *(u)*."

6. The contents of this instrument are varied according to the nature of the intended voyage, or the will of the parties; but the usual stipulations on the part of the owner or master, are, that the ship shall be tight and staunch, furnished with all necessaries, *(x)* for the intended voyage, ready by a day appointed to receive the cargo, and wait a certain number of days to take it on board. That after lading, she shall sail with the first fair wind and opportunity to the destined port, (the dangers of the seas excepted) and there deliver the goods to the merchant or his assigns, in the same condition they were received on board; and further, that during the course of the voyage, the ship shall be kept tight and staunch, and furnished with

(t) *Hunter* v. *Fry*. 2 B. & A. 421.

(u) 43 *Geo*. 3. *c*. 56. See the case of *Bishop & another* v. *Mackintosh & another*. 2 B. & C. 556.

(x) If a bill of health be essential to the performance of the voyage, it is considered as a necessary document. *Levy* v. *Costerton*, 1 Starkie, 212.

with sufficient men and other necessaries, *to the best of the owner's endeavours.*

The owner may indeed, and sometimes does, by special clauses make himself still further liable, and render himself answerable in the case of accidents or misfortunes, which otherwise would furnish him with an excuse. As in the case of a charter-party made with the commissioners of the Transport office, by which the owner covenanted that the ship should be manned with a specific number of men in proportion to her bulk, and that the whole number should be constantly on board, and which contained a proviso that the commissioners should be at liberty to mulct and make such abatement out of the ship's pay, which was a fixed sum for 12 months, as they should think reasonable, "upon the loss of time, breach of orders, or neglect of "duty by the master, *or from the ship's inability to execute "or proceed on the service on which she might be employed,* "being made appear:" It was held that the commissioners had a right to make an abatement, a service to which the ship was ordered at *Quebec,* having been delayed for a considerable time, from want of mariners, although the want was occasioned by the death of some of the original crew, who had died of the small-pox in the course of the voyage thither, the desertion of others at that place from fear of the distemper, and it was impossible to procure a fresh supply of hands during the time *(y)*.

On the other hand, the merchant usually covenants to load and unload the ship within a limited number of days after she shall be ready to receive the cargo, and after arrival at the destined port; and to pay the freight in the manner appointed. Frequently also it is stipulated that the ship shall, if required, wait a further time to load and unload, or to sail with convoy, for which the merchant covenants to pay a daily sum. This delay, and the payment to be made for it, are both called *demurrage (z)*.

Sometimes

(y) Beatson v. *Shank & others,* 3 East, 233.

(z) The master of a ship brought an action to recover a compensation in

Sometimes also particular clauses are introduced in favour of the owners, to take away their responsibility for embezzlement of the master, or other matters, for which they would otherwise be answerable.

6. *b.* It is usual also for each of the parties to these contracts to bind himself, his heirs, executors and administrators; and the owner or master to bind the ship and her freight; and the merchant the cargo to be laden; in a pecuniary penalty for the true performance of their respective covenants; this is commonly done by a clause at the end of the instrument. Such a clause is not the absolute limit of damages on either side; the party may, if he thinks fit, ground his action upon the other clauses or covenants, and may in such action recover damages beyond the amount of the penalty, if in justice they shall be found to exceed it *(a)*. On the other hand, if the party sue on such a penal clause, he cannot in effect recover more than the damage actually sustained.

7. But although the ship and freight are by the terms of a charter-party expressed to be bound to the performance of the covenants on the part of the owners or master, and this is conformable to the maritime law; yet, as I have before observed *(b)*, there does not appear to be at present any mode of obtaining in this country the benefit of the security of the ship itself in specie, for the performance of such a contract made here.

Neither in this country does the clause whereby the merchant binds the cargo, give to the owner a lien on the cargo

in damages for the detention of his ship beyond a reasonable time for the delivery of her cargo in the port of *London*, and declared also generally for demurrage. It was held, that such an action could not be maintained by the master, whatever right the owners might have to sue in their own names. It does not appear by the report what were the terms of the contract under which the cargo had been brought, nor is it distinctly alledged that there was any written contract. *Brouncker* v. *Scott*, 4 Taunton, 1.

(a) Harrison v. *Wright*, 13 East, 343.

(b) Ante, part 2. chap. 2. sect. 5. page 93.

cargo for any payment for which he might not detain it in the absence of such a clause; so that with us, the clause is wholly inoperative. This will appear by the decisions that will be presently cited. In the cases where a lien is allowed, it is not derived from this clause, but either from some general principle of law, or some special contract. Where it depends upon the general principle of law, it is confined to the specific chattels or some part thereof, in respect of which the payment is claimed; and, consequently, goods actually brought by a ship cannot be detained for a breach of a covenant to furnish a full cargo, nor for demurrage *(c)*, nor for pilotage or port charges, although the freighter may have engaged to pay them *(d)*. A lien may be extended further, or wholly excluded by particular contract, or special circumstances. And the word in its proper sense in the law of *England*, imports that the party is in possession of the thing which he claims to detain. Where there is no possession, actual or constructive, there can be no lien.

I will now cite the authorities before alluded to. Two persons who were factors hired a ship of one *Paul*, at the rate of 48*l.* per month, and executed a charter-party, by which the goods to be put on board were made liable to him, and they had power to appoint the master or mariners. Some merchants in the *West Indies* loaded the ship with goods, and allowed the factors 9*l.* per ton for the carriage. The factors who had thus chartered the ship in their own name, became bankrupts. *Paul* instituted a suit in the Court of Chancery, to compel the merchants to pay him for the hire of the ship, insisting that they were liable to do so by reason of this clause in the charter-party. But the Lord Chancellor *Hardwicke*, decided that he should recover of them no more than they had engaged to pay the factors for the freight, and that they were not liable to make up the deficiency to him. His lordship observed,

(c) *Philips* v. *Rodie*, 15 East, 547.

(d) *Faith* v. *East India Company*, 4 B. & A. 630.

observed, that by the general law, the cargo is liable to pay the freight; but that in this case, the 48*l.* per month, was improperly termed the freight of the goods, being rather the hire of the ship; that the factors had made an agreement with the master on their account, and not on the part of the merchant, and therefore the merchants were not liable; otherwise they would be in the hardest case imaginable, for they would be liable to any private agreement between the occupier of a ship and the original owners of it. "A person, said his lordship, that lets out "a ship to hire, ought to take care that the hirer is a "substantial man, it is his business to look into this; "and if the persons who hire are not competent, the master "must suffer for his neglect. Whatever hardship, there-"fore, there may be on the one hand, to the person who "lets out to hire, the hardship is much greater on the "other side; and what gives additional weight to the mer-"chant's case, is the great convenience this gives to trade "in general *(e)*."

An entire ship was chartered for a voyage out and home and by the terms of the charter-party, the merchant covenanted to pay for the homeward cargo, at certain rates per ton, on delivery of the cargo at *Liverpool*, by bills at three months; to load a full cargo, and to pay demurrage; and he bound the goods to the performance of his covenants. The Court of King's Bench decided, that the owner could not detain the goods, either for the freight of such as were put on board, but afterwards relanded by compulsion, or for dead freight, or for demurrage *(f)*. A bill was afterwards filed in Chancery for the purpose of obtaining a declaration, that the ship-owners were entitled to a lien in equity, but the Master of the Rolls, Sir *William Grant*, dismissed the bill; in the course of his judgment, his Honour said, "There can be but one right construction "of the clause, and if it could be said that the Court of "King's

(e) Paul v. *Birch*, 2 Atkins, 621.

(f) Birley v. *Gladstone*, 3 M. & S. 205.

" King's Bench had ill construed it, this is not a Court of " Appeal in which their decision can be corrected. It was " asked what effect the clause could have, if it gave no lien " either in law or equity. A court of equity is not bound " to find an equitable effect for a clause, merely because " the construction, which a Court of law has put upon it, " would leave it inoperative. In truth, it has been copied " from foreign charter-parties, with very little consideration " of the effect that might be allowed to it by the law of " this country. I think it very probable, that in other " countries it would have the effect of entitling the ship- " owner to retain the cargo for every sort of demand that " could accrue to him under the charter-party *(g)*."

By another charter-party, containing the same obligatory clause, an entire ship was let to freight for a voyage out and home, at a definite sum, payable by instalments, in the progress, and at the end of the voyage. The Court of Common Pleas decided, that the owner could not detain the goods for the payment of this money *(h)*. In each of the two last cases, the goods belonged to the charterer himself, who had become bankrupt. The last of them was decided upon consideration of the nature of a lien, as being a right to detain something, of which the party claiming the right, has already the possession; and as the entire ship was let to freight, the merchant-charterer was considered to be the owner *pro tempore*, and the goods on board to be in his possession, not in the possession of the owner who had let out the ship *(h)*.

It has however, been since decided, that although by the language of the charter-party, it may be expressed that the owner or master lets the ship to freight, this phrase does not necessarily import that the possession of the ship is given up to and taken by the charterer. And the result of the decisions seems to be, that this must depend upon the

(g) *Gladstone* v. *Bailey*, 2 Merivale, 401.

(h) *Hutton* v. *Bragg*, 7 Taunton, 14. 2 Marshall, 339.

the terms of the instrument taken all together, or upon the purpose and object of it.

Thus, in the case of a ship let to the Commissioners of the Transport Board, it was decided, that the possession passed to the King during the term of service; but this was held, to result rather from the nature of the service in which she was engaged, than from the terms of the instrument *(i)*. On the other hand, in a case wherein it appeared that, by the instrument of charter-party, the owner let, and the freighter took the ship to freight on a voyage from *Miramichi* to *Liverpool*, and the owner covenanted that the master should sail with the vessel in ballast from *Shields* to *Miramichi*, and there receive from the freighters a full cargo, and proceed therewith to *Liverpool*, and there deliver the same to the freighters; and the freighters covenanted to load the ship and pay freight for the goods at certain rates, and that such *freight should be paid upon safe delivery of the cargo*, part in cash, and part by bills; that a cargo was laden, and a bill of lading for the same signed by the master, for delivery to order or assigns, he or they paying freight as per charter-party: The Court considered the two covenants for delivery of the cargo and payment of the freight, to denote concomitant acts; and upon that ground, adverting also to the form of the bill of lading, held, that the owner was not obliged to deliver the cargo without being first paid, or satisfied as to the freight *(k)*.

In a subsequent case of a charter-party between a ship-owner and merchant, the owner granted and to freight let, and the merchant took and to freight hired, the ship for the voyage. The owner covenanted that the master should receive on board at *London*, goods to be sent alongside by the charterer, and deliver them from alongside at *Newfoundland*, according to bills of lading; there receive, and deliver

(i) Trinity House v. *Clark*, 4 M. & S. 288.

(k) Yates & another v. *Railston*, 2 B. Moore, 294. and 8 Taunt. 293.

deliver at *Demerara* other goods, in like manner; and there in like manner, receive other goods, and deliver them in the *London* Dock, according to bills of lading; and that the ship's boats should assist in loading and unloading, so as the exclusive duties and operations of the ship should not be thereby impeded. In consideration whereof, the charterer covenanted to send and take goods from alongside, and to pay for the freight and hire of the ship for the voyage, 2,600 *l.* with primage, &c. one quarter part thereof on delivery of goods at *Newfoundland*, by good bills at 60 days sight, on *London*, and the remainder by good bills at two months date from the day of the ship's report inwards, at the port of *London*. The voyage was performed, and goods of the charterer, and also goods of third persons brought from *Demerara*, under the bills of lading; the latter being deliverable to the consignees on payment of certain specified freights therein mentioned, which freights the defendant received; no bill for the three-quarters freight per charter-party having been given or tendered to him, and a bill for one-quarter given at *Newfoundland*, having been dishonoured: The Court held, (*Dallas*, C. J. dissentiente) first, that notwithstanding the words of grant, taking the whole charter-party into consideration, the possession of the ship did not pass to the freighter, but remained in the owner; and that as the freight per charter-party was to be paid to him by good bills, prior to the delivery of the homeward cargo, he had a lien thereon for such freight; secondly, that he had a right to receive the freight per bills of lading from the consignees, and had a like lien on such freight when so received (*l*).

Other questions of lien for freight have arisen, and been decided on charter-parties not containing the expression of letting or taking to freight, which may be properly noticed in this place. A charter-party contained covenants on the part of the master, to proceed to the appointed place, there receive

(*l*) *Christie* v. *Lewis*, 2 B. & B. 410, and 5 Moore 211.

receive a full and complete cargo, and proceed therewith to, and deliver the same at, the place of destination, agreeably to bills of lading, that should be signed for the same, and covenants on the part of the freighter to furnish a full and complete cargo of certain specified goods, and to pay for the freight and hire of the vessel for the voyage, at certain rates per ton of the different goods, the said freight to be paid part in cash on the day the vessel should be reported inwards, and the remainder by bills at two months after date from the day on which the delivery should be completed; the master having signed bills of lading for delivery of the freighter's goods to order or assigns, he or they paying freight as per charter-party: the Court held, that the owner was not bound to deliver the goods of the freighter without being satisfied as to the entire freight, payable according to the rates mentioned in the charter-party *(m)*.

In another case, in which by the instrument of contract, the owner covenanted that the commander or some other person in his stead, should receive and take on board the goods of the freighter in *London*, and sail to *Madeira*, and receive and take on board other goods there; that from thence the ship should proceed to *Madras* and *Calcutta*, and there the commander should deliver the goods, and receive and take on board other goods; and then the ship should proceed to *London*, and there the commander should deliver the latter goods; the freighter covenanted to pay for the freight and hire of the ship for the voyage, at the rate of 14*l.* per ton on the registered tonnage, and 2*l.* 10*s.* per cent primage on the amount of the freight, and that the freight and primage should be paid as follows; viz. 500*l.* in cash at the expiration of six months from the date of the charter-party; a moiety of the remainder by bills at two months after date, from the day on which the ship should arrive in the *Thames*, on her return from her voyage,

(m) Tute & others v. *Meek*, 2 B. Moore, 278. and 8 Taunton, 280.

voyage, and the residue by bills at four months date from the same period. The owner further agreed, that such passengers as might be required by the freighter, should be conveyed in the ship, and that all the cabins except one, should be for the benefit and at the disposal of the freighter. The freighter agreed to send goods alongside the ship, and to receive them from alongside; and there was a special clause, providing that the freighter might appoint a person to go out and home as supercargo, and to take upon himself the authority of the commander in the stowage of the cargo; but not to interfere with the duties of the commander in any other manner, without his leave. The Court of King's Bench, in deciding that the owner of the ship had the possession both of the ship and the goods for the voyage, and a lien on the goods for the stipulated hire of the ship, (there being nothing to show that the delivery of the goods was to precede the payment of that hire in cash and bills, as provided for by the deed) alluded particularly to the clause that I have last mentioned, observing there was not any one act to be done on board the ship by the freighter or his agents, except the stowage of the goods, which was specially provided for; and that this special provision as well as the clause relating to the cabins, would have been unnecessary, if it had been intended that the freighter should have possession of the ship; because in that case, he might stow and place goods and persons as and where he himself should choose, unless restrained by some special contract on his part *(n)*.

From the case last cited, and also from that of *Christie* v. *Lewis*, it appears that the right of lien for freight, does not absolutely depend on a particular covenant to pay on delivery of the cargo, whereby the payment and delivery are expressly made concomitant acts, as was the case in *Yates* & *another* v. *Railton*, before quoted, and also in a subsequent

(n) Saville v. *Campion*, 2 B. & A. 503.

a subsequent case of *Faith* v. *East India* Company *(o)*; but that this right may exist, if it appears from the instrument in any way that the payment is to be made in cash or bills, before or at the delivery of the cargo, or even if it does not appear that the delivery of the cargo is to precede such payment. The cases also shew, that the goods of the charterer may be detained, not only for freight properly so called, but also for a sum agreed to be paid for the use and hire of the ship, although the goods of others laden on the ship, can only be detained for the sums that they may have agreed to pay to the charterer, or that may be mentioned in the bill of lading, and that the bankruptcy of the charterer, or any assignment or pledge made by him of his goods, does not deprive the owner of his right *(p)*.

In the discussion of some of the cases, an argument against the right of lien was advanced from the circumstance, that a large cargo cannot be delivered from the ship all at once, to which it was answered, that the master might land the goods at a wharf, and detain them there. And in some of the cases, it appears that the goods had been deposited in pursuance of an Act of Parliament, in the *East India* Docks, or the warehouses of the *East India* Company, and notice given to detain the goods or their proceeds for the freight, by which the lien of the owner was preserved, the Company being under such circumstances considered as the agents of the owner for this purpose.

Before I quit this subject, I should observe, that where the payment is to be made by approved bills, if the owner object to a bill delivered to him, but afterwards negotiate it, he thereby loses the benefit of his objection, and his right to detain the goods *(q)*.

8. In all maritime transactions, expedition is of the utmost

(o) 4 B. & A. 630.
(p) *Faith* v. *East India* Company, 4 B. & A. 630.
(q) *Horncastle* & *another*, v. *Farran*, 3 B. & A. 497.

utmost importance, for even by a short delay, the season or object of a voyage may be lost. And therefore if either party is not ready by the time appointed for the loading of the ship, the other may seek another ship or cargo, and bring an action to recover the damages he has sustained. Nay, according to *Molloy*, even if part of the lading be put on board, and the merchant cannot furnish the residue, the owner may annul the contract, and lade his ship with other goods *(r)*; but the same author adds, that it is by no means prudent to do so without good reason and deliberation. And notwithstanding this opinion of the author, who here alludes to a contract for an entire lading, I apprehend the owner has not strictly a right to annul the contract, or to take other goods without the merchant's consent: he certainly ought not so to act, if the merchant is a responsible person; for he will have a right to sue the merchant upon the covenant for a deficiency in the cargo, and therefore it seems reasonable that the merchant, upon whom the loss arising from the deficiency will fall, should have the right to take the loss upon himself, and order the ship to sail. And accordingly the *French* Ordinance directs that if the ship be freighted by the great, and the merchant do not furnish a full lading, yet the master shall not without his consent take in other goods to complete the lading, nor without accounting to him for the freight of such goods *(s)*; which direction is consonant to general principles of law; for the hirer has a right to use the thing hired in any manner most agreeable to himself, not differing from the purpose for which it was let to him. And in this particular case, the sale of the merchant's goods may be prejudiced by taking other commodities to the market, for which he has destined them. But on the other hand, if the merchant is known, or reasonably suspected, to have become insolvent, the owner will incur no risk of damages by

(*r*) *Molloy*, book 2, chap. 4. sect. 3.

(*s*) Liv. 3. tit. 3. *Fret.* art. 2. *Pothier*, Charte-partie, num. 20.

by taking other goods to secure his freight. And he should not trust to a supposed lien upon the goods actually laden as a security for the loss he may susiain from the want of an entire cargo.

9. A charter-party, like every other deed, *takes its effect* and operation, from the day on which it is sealed and delivered, and not from the day on which it bears date, if different from the day of the delivery, unless there be words of reference to the day of the date. And therefore, where by a charter-party dated the 9th day of *October*, but not delivered till the 28th of *October*, one party covenanted to pay a moiety of the value of all the corn "which then "was, and thereafter should be, laden on board the ship," it was held that he was not liable to pay for any corn that was not really on board the ship on or after the 28th of *October*. In fact, the corn was cast away between the 9th and the 28th of *October (t)*.

10. The word "*days*," used alone in a clause of *demurrage* for unlading in the river *Thames*, is said to be understood of working days only, and not to comprehend Sundays or holidays, by the usage among merchants in *London (u)*; but it is much better to mention *working*, or *running* days expressly, according to the intention of the parties.

The usual clauses purporting, that *it is covenanted and agreed by and between the parties*, that a specified number of days shall be allowed for loading and unloading, and that it shall be lawful for the freighter to detain the vessel for those purposes a further specified time, on payment of a daily sum, constitute a *contract* on the part of the freighter, that he will not detain the ship for those purposes beyond the two designated periods; and if he does so detain her, he is liable to an action on the contract, in the form adapted to the nature of the instrument *(x)*. If a ship be so detained,

(t) *Oshey* v. *Hicks*, Cro. James, 263.

(u) *Cochran* v. *Retbergh & others*, 3 Espin. N. P. Cases, 121.

(x) *Randall* v. *Lynch*, 12 East, 179.

tained, the daily rate of demurrage mentioned in the charter-party, will in general be the measure of the damages to be paid, but it is not the absolute or necessary measure; more or less may be payable, as justice may require, regard being had to the expence and loss incurred by the owner; and the amount must be settled by a jury, if the parties cannot agree *(y)*. And where the time is thus expressly ascertained and limited by the terms of the contract, the merchant will be liable to an action for damages, if the thing be not done within the time, although this may not be attributable to any fault or omission on his part; *for he has engaged that it shall be done.* If the merchant is the author of delay, by which expences are afterwards occasioned, those expences will fall upon him *(z)*. Many vessels are now obliged by law to unlade at particular docks in the river *Thames*; and in many cases, the law allows the importer to warehouse his goods at such docks for a certain time, under security given for payment of the import duties, instead of removing them into his own custody, and discharging the duties immediately; which is often a matter of great convenience to the importer, and has become the usual practice. It has sometimes happened, from the great resort of vessels to these docks at particular seasons, that considerable delay has taken place in the unlading, especially where the goods were to be warehoused: and it has been questioned whether the merchant should answer for such delay. And according to the principle above laid down, it has been twice held, that he must answer, by reason of the terms of his contract. On two occasions, some stress was laid on the circumstance of warehousing the goods, it being understood that if the importer had chosen to take them from the docks immediately, the delay would not have happened *(a)*. On another occasion, this

(y) Moorsom v. *Bell.* 2 Campbell, 616.

(z) The ANGERONA, *Marks,* 1 *Dodson's* Adm. Reports, 382.

(a) Struck v. *Tenant,* Coram Mansfield, Ch. J. Sit. at Guildhall, after Trinity Term, 1806. And see *Leer* v. *Yates,* 3 Taunt. 387.

this circumstance does not seem to have been noticed *(b)*. The general rule appears to be, that if the merchant covenant to do a particular act, which it becomes impracticable for him to do, he must answer for his default, unless the act be or become contrary to the law of his country, such as a trading with an enemy. The merchant, according to the language of Lord *Ellenborough (c)*, "is the adventurer, "who chalks out the voyage, and is to furnish at all events "the subject matter out of which the freight is to accrue." And upon this principle it was held, that a merchant who had covenanted to furnish a cargo at *Gibraltar*, within a limited time, but was prevented from doing so by a prohibition of intercourse with that shore on account of an infectious disease, was answerable in damages to the owner. This subject will be more fully noticed in a following chapter *(d)*. But on the other hand, where, by the terms of the contract, the merchant was to be allowed the usual and customary time to unload the vessel at her port of discharge, it was held that he was not answerable for a delay of this sort, although great part of it was owing to his election to warehouse and bond the goods; that appearing to be the usual practice with regard to cargoes of the like description *(e)*. The same law was laid down with respect to a consignee of goods sent in a general ship without any stipulation on this subject in the bill of lading *(f)*.

Demurrage, properly so called, arises out of the terms of some contract: if a ship be improperly detained by the merchant, the owner may in some cases have a special claim to damage in the nature of demurrage. Delays occasioned in one case by the necessity of obtaining a special order

(b) *Randall* v. *Lynch*. 2 Campbell, 352.

(c) *Barker* v. *Hodgson*. 3 M. & S. 267.

(d) Chapter 11 of this part, on the dissolution of contracts, &c.

(e) *Rodgers* v. *Forresters*. 2 Campbell, 483.

(f) *Burmester* v. *Hodgson*. 2 Campbell, 488.

order from government for the landing of goods *(g)*, and in another case, by the refusal of custom house officers to allow a part of the cargo to be taken out of the ship *(h)*, have been considered as improper detentions; but the owner has no claim of this sort for a delay occcasioned by an *hostile* occupation of the destined port, although after such delay, it may be found expedient entirely to abandon the voyage, and thereby the whole employment of the ship becomes unprofitable *(i)*.

Words have been sometimes introduced into the margin of a bill of lading, importing that the goods should be taken out of the ship within a certain time, or that in default, a certain sum per diem should be paid for every day afterwards; in such cases it has been decided, that the person claiming and receiving the goods under the bill of lading, is answerable for this payment; and this, although he may not have received notice of the arrival of the ship within the time, for it is his duty to inquire for and watch the ship's arrival *(k)*; or, although the bill of lading not having arrived in time, the merchant expecting the goods, may have demanded, and the master may have refused to deliver them without the production of the bill of lading, or of an indemnity, for the master had a right to insist on this *(l)*; and if the consignees choose to warehouse their goods under bond for payment of the duties, in which case they can by law be landed only at some particular dock, and by reason of the crowded state of the dock the ship is obliged to wait several days before the delivery can commence, the shippers must pay for the delay according to the terms of the bill of lading *(m)*.

The payment of *demurrage*, stipulated to be made while a ship is waiting for *convoy*, ceases as soon as the convoy is

(g) *Hill* v. *Idle*, 1 Starkie, 111.
(h) *Bessey* v. *Evans*, 4 Campbell, 131.
(i) *Liddard* v. *Lopes & another*, 10 East, 526.
(k) *Harman* v. *Clarke & others*; *Same* v. *Mant & others*, 4 Campbell, 159 and 161.
(l) *Jesson* v. *Solly*, 4 Taunton, 52.
(m) *Lear* v. *Yates*, 3 Taunton, 387.

is ready to depart; and such payment, stipulated to be made while a ship is waiting to receive a *cargo*, ceases, when the ship is fully laden, and the necessary clearances are obtained, although the ship may in either case happen to be further detained by adverse winds or tempestuous weather. And if the ship has once set sail and departed, but is afterwards driven back into port, the claim of demurrage is not thereby revived. This appears by the two following authorities:

First, as to *waiting for convoy*. Two ships, the *Swallow* galley and the *Beak* galley, were hired by charter-party, for a voyage from *Leghorn* to several ports in the *Mediterranean*, and from thence to *London*, and it was stipulated, that after receiving their cargo at the ports in the *Mediterranean*, they should sail directly for *Gibraltar*, and there remain until some convoy should then next present from thence, bound either for *Lisbon* or *England*, and sail with such convoy either for *Lisbon* or *London*, and if the convoy should not proceed directly for *England*, should remain at *Lisbon* until some convoy should present from thence for *England*, and then sail with such convoy; and if the convoy should not go into the *Downs*, then they should wait at the first port they should make in *England*, for convoy from thence to the *Downs*: and the merchants covenanted to pay in *London*, 6*l.* per day for the *Swallow*, and 7*l.* per day for the *Beak*, for each day that they should WAIT FOR CONVOY at *Gibraltar*, *Lisbon*, or elsewhere, during the voyage, above the space of *twenty* days in the whole, during which *twenty* days they were to lie at the charge of the commanders. The ships having received their lading, sailed for *Gibraltar*, and arrived there on the 11th of *March* 1708. On the 25th of *September*, Sir *John Leake* passed by *Gibraltar*, but refused to take them under his convoy, having appointed Captain *Moody* for that purpose. On the 27th of *September*, Captain *Moody* arrived at *Gibraltar*, and

and staid there till the 6th of *October*, on which day the ships, after having waited 148 days, sailed with him for *Lisbon*, arrived there with him on the 16th of the same month, and staid with him there till the 14th of *November*, and then sailed with him for *England*, and arrived with him at *Falmouth* on the 2d of *December*; and there the two ships waited till the 17th of *January*, when they sailed from thence, and joined Captain *Moody* at *Plymouth*, he having previously left *Falmouth*, and put into *Plymouth*, and sailed with him to the *Downs*; and ultimately arrived in safety at *London*. Part of the delay of the two ships at *Falmouth*, and of Captain *Moody* at *Plymouth*, was occasioned by tempestuous weather. The masters claimed demurrage for the whole period of the several detentions after the first *twenty* days. The merchants insisted that nothing was due for the time they waited, *after Captain Moody joined them*: and indeed at first insisted, that they ought to have sailed with Sir *John Leake*, but this was held to have been impossible. The Lord Chancellor *Cowper*, declared, that demurrage was payable both during the time that the ships waited for the arrival of convoy, and during the time that the convoy was not ready to sail; for if the convoy was not ready or able to sail at any time when the ships were both able and ready, the staying of the ships for the convoy, was the same thing as if no convoy was near at hand; but that no demurrage ought to be allowed while the ships and their convoy staid for want of wind, or were detained by contrary winds; and upon this principle it was ultimately decided by the Lord Chancellor *(n)*, and afterwards by the House of Lords upon appeal *(o)*, that demurrage should not be paid for such portion of the detention at *Falmouth*, as was thought properly attributable to the weather, but that it should be paid for all the rest of the

(n) Lannoy & another v. *Werry & another*, 2 Bro. P. C. 60.

(o) The only alteration of the Chancellor's decree made in the House of Lords, was in the number of days, for which demurrage should be paid at *Falmouth*.

the time that the ships had waited there, and for the whole period of their stay at *Lisbon* and *Gibraltar*, after the expiration of the first *twenty* days.

SECONDLY, as to *waiting for a cargo*. *Jamieson & Co.* merchants at *Leith*, having contracted with *Atkins & Co.* merchants at *St. Petersburgh*, for a quantity of tallow, which, as the latter represented, would be ready for delivery in the beginning of *August*, sent the ship *Bell*, whereof *John Lawrie* was owner, and one *Anderson* master, to *Cronstadt*, under the following letter of instructions delivered to the master, which was the only evidence of the contract between the parties. "You will on your arrival at *St. Petersburgh*, deliver our inclosed letter to *Messrs. Atkins, E. Rigail, & Co.* to whom we address your ship the *Bell*. "They will ship 100 tons of tallow, and get you what "deals and battens you may want to fill up your ship— "you have a provisional order to *Messrs. G. Scougal & Co.* "for 40 tons of iron, to *Messrs. S. & R. Anderson*; if they "cannot ship it in time, you may apply to *Messrs. Hill, Cazalett, & Co.* to whom you have a letter; failing them, "you may make inquiry through the factory, and if you "can't get any, you'll directly load without it.—*Observe, you must get clear and sail before the 1st September N. S.* "as the premiums of insurance advance greatly after that "date.—About this we wrote particularly to *Messrs. Atkins, E. Rigail, & Co.* and we hope they will attend to it. We "have no objection to your taking any goods on freight "to the extent of 50 or 60 tons, but the ship must not be "detained for them: and with respect to deals, you will "be at great pains in wracking them."

The ship arrived at the port of destination on the 22d of *July* 1787, and the master applied to *Atkins & Co.* according to the instructions. They informed him that the tallow, which was to come by water from the interior of the country, could not be expected till towards the end of *August*; and

and in fact, on account of the dryness of the season, which retarded the inland navigation, it did not arrive at *St. Petersburgh* till *October*, and was not shipped till near the end of that month. The master made a protest against the merchants for not loading the ship by the *first* of *September;* but waited for the tallow by the directions of *Atkins & Co.* and, as it seemed, under an opinion that he was bound to do so. The lading was completed, and the ship's clearances obtained on the 28th of *October*, and the ship, having waited a few days for a wind, sailed out of the mole of *Cronstadt*, but soon meeting with adverse winds and frost, was forced to return to *Cronstadt*, and was there frozen up, and remained until the 11th of *May*. The winter began earlier than usual. Upon the arrival of the ship and delivery of the cargo at *Leith*, the owner claimed of *Jamieson & Co.* freight at the usual rate for the voyage; demurrage from the *first* of *September* till the 11th of *May*, and an indemnification against a claim made upon him by another merchant, for whom he had shipped some flax soon after the arrival of the vessel at *Cronstadt*, for damages occasioned by the delay in bringing the flax to *Leith*.

The case was litigated in several courts in *Scotland*, and was at last brought by appeal to the British House of Lords. It was admitted on both sides, that the master might by law have returned empty, or have obtained another cargo after the *first* of *September*, but the owner of the ship contended, that as the master had waited at the request of the correspondents of *Jamieson & Co.* they were answerable for all the damage arising from that delay.

The House of Lords decided that *Jamieson & Co.* should pay only the usual frieght, and a compensation in the nature of demurrage for the period between the 1st of *September* and the 29th of *October (p)*. This decision was conformable to one of the determinations, which had taken place

(p) *Jamieson & others* v. *Laurie*, decided in the House of Lords 10th *Nov.* 1796. Reported 6 Bro. P. C. p. 474. 2d. edit.

place in *Scotland*, and also to the usage of trade, as represented by several merchants in *London*, who had been examined in the cause, and who deposed, that the claim of demurrage ceased as soon as a ship is cleared out and ready for sailing.

By a charter-party, the owner covenanted that the ship should take a cargo at a port, and proceed with the first convoy that should sail for *England* fourteen working days after she was ready to load; and the merchant covenanted to load and dispatch her within fourteen days after notice that she was ready to load, with liberty however to detain her fifteen running days after the expiration of the fourteen, paying four guineas per day demurrage. The first convoy sailed after the fourteen days were expired, but before the termination of the additional fifteen days. No other convoy sailed until nearly two months after the first. Under these circumstances, the owner sued the merchant for the demurrage, and also for compensation for the detention of the vessel beyond the fifteen days; but it was held that the merchant was not liable for the latter, and that the parties were in the same condition at the end of the fifteen days, as they would otherwise have been in at the end of the fourteen days *(q)*.

11. The general rule, which our Courts of Law have adopted in the construction of this as well as other mercantile instruments, is, that the construction should be liberal, agreeable to the real intention of the parties, and conformable to the usage of trade in general, and of the particular trade to which the contract relates. Few cases, however, on this head, have received a judicial determination. I will here mention such of them, as do not more properly relate to the other divisions of this treatise.

11. *b*. The performance of a contract under seal cannot, according to the law of *England*, be released by parol, or by a written instrument not under seal. The terms of such a charter-

(q) Connor v. *Smythe*, 5 Taunton, 654. 1 Mars. 276.

a charter-party may be explained by usage, but cannot be altered, nor can any terms be introduced so as to vary the nature of the original contract *(r)*. And if by agreement of the parties, a new voyage be substituted for the voyage mentioned in the charter-party, and such voyage be performed, the owner cannot sue the merchant on the original instrument for the freight or demurrage *(s)*; his remedy, if any, must be founded on the subsequent agreement. But if such a contract be to take effect from a particular time, an agreement relating to an earlier period of time will not be a variation or dispensation, and may be good and binding. Thus, where by a charter-party under seal a ship was let at a certain rate per month, to commence and be computed from the day of her departure from *Gravesend*, and was to take in her cargo at a port in the *Channel*, and sail therewith on the intended voyage; a subsequent verbal agreement for loading the ship in the *Thames*, and commencing the payment from the day of her clearing out at the Custom-house, was held to be binding, and the merchant was compelled to pay for the interval between clearing out and sailing from *Gravesend (t)*.

11. *c.* A ship was chartered for a voyage from *England* to *any port or ports in St. Domingo*, there to deliver her outward cargo and take in a return cargo for *England:* and the merchant covenanted to procure a licence. He did in fact procure a licence, with which the ship sailed to the ports of *Cape Francois* and *Gonaive*, (both of which were under the dominion of *Christophe*, and not in the power of the enemies of *Great Britain*), and there delivered her outward, and received a return-cargo. She was afterwards taken by one of his Majesty's frigates, and condemned at *Jamaica* upon the supposed necessity of a licence for this voyage, and the insufficiency of the actual licence to protect

(*r*) *Gibbon* v. *Young*, 2 B. Moore, 224.

(*s*) *Thompson* v. *Brown*, 7 Taunt. 656.

(*t*) *White & others*, v. *Parkin & others*, 12 East, 578.

tect the return-cargo. The sentence was reversed upon appeal, the owners paying the captor's costs; it being considered that no licence was necessary for the voyage to the ports before mentioned, although a licence would have been necessary for such a voyage to some other ports of *St. Domingo*. Under these circumstances it was held, that the merchant was not answerable on the covenant to procure a licence, because that covenant would only apply to a voyage for which a licence was necessary *(u)*.

11 *d*. In a charter-party for a period of time, at a certain monthly freight to be paid at particular times therein mentioned, it was stipulated that the vessel should be navigated by fifty persons, and such further number, not exceeding one hundred, as the merchant should require, and that he should make an allowance to the owner for the expence of the men beyond fifty; two calendar months allowance for such men, to be added to the first payment of freight; but the residue of such allowance *not to be paid until the ship's discharge or return from her first intended voyage*. An additional number of men were employed at the merchant's request, and after the ship had been in his service for about ten months, she was accidentally burnt in the *West Indies*. The merchant contended that he was not bound to pay the allowance for more than the first two months; but the Court held the loss of the ship to be a discharge from his employment within the meaning of this contract, and he was compelled to pay the allowance up to the time of the loss *(q)*.

11. *e*. By another charter-party for time, it was agreed that the ship should be at the disposal and direction of the merchant; that the master should receive a cargo at *London*, and proceed therewith to any port or ports in *Spain*

(u) Johnson v. *Greaves*, 2 Taunton, 344. See also on the subject of licence. *Siffken* v. *Allnutt*. 1 M. & S. 39. The introduction of a single article, not specified in the order, should not be considered as sufficient to vacate the licence altogether. *Butler* v. *Allnutt*, 1 Starkie, 222.

(q) Havelock v. *Geddes*, 10 East, 555. See post chap. 7. *sect.* 12, b.

Spain and *Portugal*, or either, as he should be ordered by the merchants, and there deliver the cargo agreeably to the bills of lading, that should have been signed for the same. The merchant loaded the ship for *Lisbon*, and the master signed bills of lading for delivery there. It was held that the merchant could not change the destination, and send the ship to *Gibraltar*, without giving up the bills of lading to the master, or at least offering a sufficient indemnity against any claims that might be made upon him by the holders thereof *(x)*.

12. In a case which happened in the beginning of the reign of King *Charles the First*, the owner or master covenanted that his ship should sail with the first wind on a voyage to *Cadiz*; and the merchant covenanted that if the ship should go on the intended voyage, and return to the *Downs*, he would pay a certain sum; to recover this sum an action was brought. The merchant pleaded in his defence, that the ship did not sail with the next wind; which fact was admitted by the plaintiff. But the Court held that the substance of the covenant, and primary intention of the parties, were, that the ship should perform the voyage; and not that the ship should sail with the next wind, which changes every hour; and that the merchant must pay the money *(y)*. But although it appears by this case that the owner will not absolutely lose his freight by a delay in the commencement of the voyage, if the voyage be afterwards performed; yet if the merchant sustain any injury by such delay, he will be entitled to a compensation in damages proportioned to his loss *(z)*.

12. *b*. These principles have been recognized in recent cases in our Courts. Thus where it was stipulated by a contract

(x) *Davidson* v. *Gwynne*, 12 East, 381.

(y) *Constable* v. *Cloberie*, Palmer, 397. See also the opinions of *Lawrence* and *Le Blanc*, Justices, in *Hall* v. *Cazenove*, 4 East, 477.

(z) Note on the *Guidon*, cap. 7. *sect.* 10. p. 240. *Roccus*, not. 56. *Straccha de nautis*, par. 3. num. 3, 4, & 5. *Malyne*, p. 98.

contract made at *Riga*, that the master should sail from thence with the first favourable wind *direct* to *Portsmouth*, and instead of sailing *direct* to the place of his destination, he put into *Copenhagen* unnecessarily, where the ship was detained a long time, and in consequence of such deviation the merchant lost the benefit of the insurances which he had effected, and was put to considerable expence in effecting others; the ship being afterwards liberated, the voyage performed, and the cargo delivered and accepted, it was held that an action might be maintained for the stipulated freight. The merchant insisted that the special contract was avoided by the deviation, and that the master could only be entitled to a reasonable compensation for the conveyance of the cargo, in the estimation whereof allowance must be made for the expence, which the merchant had incurred through his fault: but this was not allowed, there being a specific agreement for specific freight, and this agreement substantially performed; and the proper remedy of the merchant being a cross action for the recovery of damages *(a)*. Again: by a charter-party, under which a ship was let to hire for a definite time, commencing on a day specified, and longer if required, at a certain monthly payment, the owner covenanted that the ship should at his expence be *forthwith* made tight and strong, and fitted, &c. for a voyage for the time mentioned to foreign parts: the ship sailed from *London* with a cargo, put on board by the merchant; and an action being brought for the monthly payments, the merchant alledged that nothing was due, because the ship was not forthwith, nor within a reasonable time, made tight and staunch, and fit for the voyage, but sailed in an insufficient state, in consequence of which she went into *Portsmouth* to repair, and he lost the use of her for a long time, and his goods were injured: but this was held to be no legal answer to the demand, not even for the period

(a) Bornman v. *Tooke*, 1 Campbell, 377. The contract was not under seal.

period of her stay at *Portsmouth* to repair; the merchant having accepted the ship and taken her into his employment, and put his goods on board; though if the ship had not been put into a proper state for the voyage, and he had on that account refused to accept and employ her, his refusal would have been justifiable *(b)*. So in the case of another charter-party for time at a monthly payment, whereby the master covenanted that immediately after being loaded and dispatched he would (wind and weather permitting) sail *with the first convoy* for the intended voyage; the voyage being in fact performed, it was held that the hire might be recovered, although the master had neglected to sail with the first convoy *(c)*. "The principle of the "decision in these and other like cases is, that unless the "non-performance alledged in breach of the contract goes "to the whole root and consideration of it, the covenant broken is not to be considered as a condition precedent, but as a distinct covenant, for the breach of "which the party injured may be compensated in damages *(d)*." And upon this principle, if it be agreed that the master shall load a complete cargo, and deliver the same on being paid freight at a certain rate per ton of goods, he will be entitled to the rateable freight for goods loaded and delivered, although he improperly refuse to take on board a complete cargo *(e)*. The case of *Storer* against *Gordon and others (f)* may also be considered as furnishing an illustration of the rule relating to conditions precedent. In that case the owner covenanted to let his ship to freight, and to proceed with a cargo from *London* to *Cagliary*, and thence to *Naples*, and there make a right and true delivery of

(b) *Havelock* v. *Geddes*, 10 East, 555.

(c) *Davidson* v. *Gwynne*, 12 East, 381.

(d) By *Lord Ellenborough* in the case last cited.

(e) *Ritchie* v. *Atkinson*, 10 East, 295.

(f) 3 M. & S. 308. See also *Fothergill* v. *Walton*, which was determined upon the authority of *Storer* v. *Gordon*, in which the covenant was so special and peculiar, that it has not been thought necessary to do more than thus refer to the case. 8 Taunton, 576.

of the outward cargo, *and having so done*, receive on board a return cargo for *London*, the perils of seas, capture, restraint, and detention of or by enemies, princes, rulers and others, and all other inevitable accidents, excepted. And in consideration of the premises, the merchant covenanted that within a stipulated number of days he would, at *Naples* find and provide, as he did thereby warrant and assure unto the plaintiff a full and complete return cargo of wine, and so forth, and pay for freight at the rate of 15*l.* per ton for wine, and a proportionate freight for other goods, and that 1,750*l.* part of the said freight, should be paid on the delivery of the outward cargo, (which was to be considered as earned and due for outward freight) by a bill of Exchange, and the remainder of the freight in equal moieties, within a certain time after the ship should be reported inwards at *London*. The ship arrived at *Naples* with the outward cargo, and while waiting there to deliver, it was seized and taken, together with the cargo, by order of the persons exercising the powers of government there; and the cargo landed by order of the same persons, but the master put into possession of the ship for the purpose of loading his homeward cargo. The merchant did not furnish a homeward cargo, and contended that by reason of the outward cargo not having been delivered to him, he was not bound to do so, nor to pay the 1,750*l.* as the outward freight; the owner on the contrary, claimed the 1,750*l.* and also compensation in damages for not being furnished with a homeward cargo. It was held, that he was not entitled to the 1,750*l.* because he had not delivered the outward cargo to the merchant, but that he was entitled to a compensation for the loss of the homeward cargo, the delivery of the outward cargo not being a condition precedent to his right to the homeward cargo

13. The merchant, however, may make the arrival of the ship by a particular time *(g)* or even the arrival of another ship

(g) Shadforth v. *Higgin*, 3 Camp. 385.

ship with an outward cargo, a condition precedent to fur nishing a homeward cargo for the ship, by special and particular proviso, as was done in a case that lately came before the Court of King's Bench *(h)*; and this is the proper method to be adopted, in order to give effect to such an intention on the part of the merchant.

For altho the contract by charter-party is in general of that kind which the lawyers call reciprocal, that is, mutually obligatory upon each party; nevertheless the parties may by particular clauses render it obligatory upon one, and optional to the other. Thus where the master of a vessel bound on a voyage to the island of *Madeira*, covenanted by a charter-party, that he would directly as wind and weather would permit, after the discharge of his cargo at that island, sail and proceed to *Winyaw* in *South Carolina*, or as near thereto as he could safely get; and there stay *forty* running days from the time of such arrival, if not sooner dispatched; and load his ship with such rice and other goods as the merchant's agents, &c. should tender to be laden; in consideration whereof the merchant agreed to pay him freight at the rate of 4*l.* 10*s.* *per ton*, for every ton delivered at the port of *London*, and also two-third parts of port-charges, pilotage, &c. which charter-party contained the following *proviso*—"That if the said ship should not be "arrived at *Winyaw* aforesaid, by the *first* day of *March* "next ensuing the date of the said charter-party, then and "in such case it should be in the option of the merchant, "his factors or assigns, on the said ship's arrival at *Win-* "*yaw*, either to load the said ship on the terms aforesaid, "or not; or at the then current freight given to ships "loading at *Winyaw* for the voyage aforesaid; or to refuse "the said ship entirely; so always that such the intention "of the said merchant, his factors or assigns, was de- "clared to the master of the said ship within *forty-eight* "hours after his application to the factors or assigns of "the

(h) Soames & another v. *Lonergan & another*, 2 B. & C. 564.

" the said merchant at *Winyaw*." And on this charter-party the merchant brought his action; alledging, *first*, that the ship did not sail and proceed to *Winyaw*, or as near thereto as she could safely get, in order to load, &c. but that the master (the defendant) wilfully absented himself therefrom. And, *secondly*, that the master did not on the *first* of *March*, or at any time afterwards, arrive at *Winyaw*, but wilfully absented himself therefrom. In defence to which action the master pleaded, that he did proceed with all convenient speed and sail to the island of *Madeira*, but by reason of contrary winds and bad weather, and from no other cause, was prevented from arriving there till the 16th of *February*, so that it was impossible for him to discharge his outward bound cargo at *Madeira*, and after such discharge to arrive at *Winyaw* by the *first* of *March*; the facts of which plea, the plaintiff admitted to be true; and the question therefore was, whether or not, as the merchant had his option to load the ship or not, in the event of her arrival at *Winyaw* after the *first* of *March*, the master, having been unavoidably delayed in the previous voyage by no fault of his own, so as to render his arrival at *Winyaw* by that time impossible, was bound to sail thither on the chance of the merchant's chusing to give him a freight, when he should happen to arrive.

The Court held, that by the terms of the charter-party, the master had bound himself to do this. And Lord *Mansfield* said, " The plaintiff wanted a ship at *Winyaw* " in *Carolina* to load with rice, and therefore he covenanted " with the defendant to freight the ship there, and the de- " fendant covenants absolutely to go thither, and in order " to quicken the ship's arrival, there is a *proviso*, that if he " gets there by the *first* of *March*, he is to be certain of " a freight, but if he does not arrive there before the *first* " of *March*, then the plaintiff was to declare in *forty-eight* " hours, whether he would freight the ship or not. The " defendant therefore thereby became the insurer of the " risk of his getting there before the *first* of *March*, in

" which

" which event he was sure of a freight; but he still had " a general chance of getting a freight, even though he " should not arrive till after that time. The words are " positive and express, '*that he should go thither.*' The " parties plainly meant that the ship was to go thither, " and the consideration fails by his not going *(i)*."

13. *b.* A charter-party, for a voyage with the ship *Anne*, from *London* to *Petersburgh* and back, after the usual clauses for unloading and loading at *Petersburgh*, and payment of freight at a certain rate per ton of the ship's capacity, contained the following special stipulations; viz. the master covenanted, that if political or other circumstances should arise to prevent the shipping a return cargo, or discharging the outward cargo, the merchant or his agents should be at liberty to detain the ship at *Petersburgh* for *forty* days in the whole after her arrival there; and the merchant covenanted, that after the ship should have remained there for that time without delivery of the cargo, the master should be at liberty to return with his vessel to *London*, or any other port in *England*; and that he would pay him 2,500*l.* immediately upon the arrival of the ship at *London*, or any such port in *England*. In fact, the *Russian* government refused to permit the cargo to be landed at *Petersburgh*, and the master, intending to act for the best, after waiting the *forty* days, proceeded to *Stockholm*, and there sold the cargo to some disadvantage, and took in other goods, which he brought to *London*, upon freight. It was contended that the master had no right to the 2,500*l.* because he had not returned directly from *Petersburgh* to *England*; but the Court of King's Bench decided that he was not bound so to do, considering that such a construction of this instrument might under circumstances be very inconvenient to both parties, and determined that he was entitled to the stipulated sum, after a deduction for the freight earned in bringing the goods from *Stockholm*.

(i) Shubrick v. *Salmond*, 3 Burr. 1637.

holm (k). This matter came before the Court in an action brought by the merchant against one of the underwriters on a policy of insurance, which he had effected upon this adventure; it does not appear what was the amount of the freight earned by bringing the goods from *Stockholm*, but it may be presumed to have been less than the 2,500 *l.* nor does it appear upon what terms the merchant had settled his account with the master of the ship, and probably the account had not been settled. It should also be observed, that the master had taken upon himself to sell the goods at *Stockholm*, which he had no right to do, and had not strictly performed his part of the contract, which seems to have required that he should bring them back, although he is not expressly and in terms required to do so; and perhaps the sale of the goods enabled him to obtain the cargo that he brought back. Upon another charter-party, in similar terms, a question afterwards arose between the master and the merchant. This was on the ship *Resolution*; the money to be paid on the contingency before-mentioned, was 2,700 *l.* with 10 *l.* per cent thereon, and one hundred guineas as a gratification to the master. A small quantity of lead was the only thing taken out from *England*. The ship not being allowed to unload at *Petersburgh*, and no cargo being offered, nor directions given on the part of the merchant, the master after waiting the *forty* days, sailed to *Stockholm*, and there took in a cargo of hemp, which he stowed upon the lead, and returned with both to *London*, and there delivered the lead to the merchant. Some expence was incurred in relation to the lead; and a considerable expence in obtaining and waiting for the cargo of hemp. The clear profit of bringing this cargo was about 2,400 *l.*; the sums payable under the charter-party, if the contingency had not happened, and the outward cargo had been delivered and a homeward cargo brought back, would have been about 4,000 *l.*: the master offered to settle

(k) *Puller & another* v. *Stainforth*, 11 East, 232.

settle the account with the merchant by charging him with what would have been due, if he had loaded the ship homeward, and allowing him the benefit of the clear earnings that had been made; thus demanding from him about 1,600 *l.* But *this he refused*, and insisted that the earnings should go in diminution of the 2,700 *l.* &c. and that the master was therefore entitled only to about 600 *l.* Upon this the master brought an action in the Court of Common Pleas, upon the charter-party, for the non-payment of the 2,700 *l.* with the per centage and gratuity. At the trial the jury gave a verdict for those sums. An application was made to the court to reduce the verdict to the sum that had been previously offered by the merchant: but, after argument, the verdict was allowed to stand. The decision of the case on the ship *Anne* was strongly urged as an authority in support of the application: in support of the verdict it was argued that this payment of the 2,700 *l.* &c. was the stipulated price of a mutual release from the contract; and the court, adverting to the particular terms of this instrument, considered that the parties had thereby fixed and ascertained, by their own agreement, the sum to be paid in the event that had happened; and although it was thought that the master was bound to bring back the lead, yet it was held that he was at liberty to bring back other goods also for his own benefit, if he could obtain them *(l)*. By this decision, the master, in effect, received more than he had originally claimed when he made the very fair and equitable offer before mentioned; and more than he would have received if the merchant had loaded the ship at *Petersburgh:* but as the merchant had rejected the offer, the parties stood before the court upon their legal rights. It

(l) Bell v. *Puller & another*, 2 Taunton, 285. The Judgment in this cause was questioned incidentally in the Court of King's Bench in an action depending on one of the policies of insurance effected by Messrs. *Puller*, but the Court thought the insurers bound by this judgment. None of the learned Judges questioned the propriety of the decision; Mr. Justice *Bayley* expressly said he thought the Judgment right. See *Puller* v. *Halliday*, 12 East, 494.

It is interesting to remark the coincidence of this decision of the Court of Common Pleas with the sentiments of two learned foreigners on an article of the *French* Ordinance, somewhat similar to the particular agreement of these parties. In the first place it will be recollected, that the parties had fixed a sum to be paid in the event of the merchant's not loading the ship, and that this sum was about half of what the master would be entitled to if he had brought a cargo. The case did not stand upon a general covenant to load the ship; the proper remedy for a breach of such a covenant, according to the law of *England*, would be an action for damages; and in estimating the damages, the Jury would make a deduction for such benefit, if any, as the master might derive from bringing the goods of other persons, but if he should have been obliged to return empty, they would award damages equivalent to the sum that would have been payable by the merchant for a full cargo: taking care on the one hand that the master should lose nothing, and on the other hand that he should gain nothing, by the breach of the merchant's contract. And this agrees with the opinions of *Valin* and *Pothier* on one of the articles of the *French* Ordinance, which imports, that "the merchant, who does not load the quantity of "goods mentioned in the charter-party, shall nevertheless "pay the freight as if the whole had been laden *(m)*." Notwithstanding this rule, they say, if the master procures goods from other persons, the freight that he derives from them shall go in diminution of the sum to be paid by the merchant *(n)*, for the Ordinance awards the whole to him only by way of indemnity *(o)*. But there is another article of the Ordinance, which, as a general rule is very extraordinary. "If the contract be for a certain quantity "of goods," not the entire ship, "the merchant, who "will withdraw his goods before the ship's departure, may "cause

(m) Ordonance de la Marine du mois d'Aoust, 1681. Liv. 3. Tit. 3. *Fret.* Art. 3.

(n) *Pothier*, Charte-Partie, num. 76.

(o) 1. *Valin*, page 642.

" cause them to be unloaded at his own expence, on pay-
" ment of *a moiety* of the freight *(p)*." This is analogous to the particular stipulation in the charter-party of the *Resolution*. The reason of this article, says *Valin (q)*, is, that the master may find other goods to replace those that are withdrawn, and a moiety of the freight is considered as a sufficient recompence for the delay that may be occasioned; from whence it follows that the master shall have the moiety without deduction, although in the end he may obtain a full cargo. *Pothier*, with more precision, says, The moiety of the freight, which the merchant pays in this case, being *the price of the risk* that the master runs of not being able to let to other persons the part of his ship which the merchants goods ought to occupy, or of not finding an equally valuable freight, he ought to have the profit of this moiety, and to retain it, although he may be able to let out this part for an equal or even a greater freight; for having run the risk of losing the freight of this part, if he had not been able to let it, he ought to have the profit of it. The master by relinquishing, under this obligation of law, a moiety of the freight to the merchant, acquires the right of employing for his own benefit the part that had been let to him *(r)*. So in the case of this charter-party, the master having agreed to accept, as a substitute for his general right to an equivalent in damages, in case the merchant should not load the ship, a fixed sum short of the price of a full cargo, by which he might be a loser if he could not obtain a cargo elsewhere, was entitled to the whole of the stipulated sum as the price of the risk, if he had the good fortune to find other persons who would load his ship.

14. The charter-parties of the *East India Company* usually contain the following clauses *(s)*: " As touching the
" freight to be paid or allowed by the Company, it is
" agreed

(p) *Fret.* Art. 6.
(q) 1 *Valin*, 646.
(r) Charte-Partie, num. 78.
(s) *Hotham & another* v. *E. I. Company*, Doug. 272.

" agreed, and the Company covenant with the said part-
" owners, that the Company shall and will, in case and
" upon condition that the ship performs her voyage, and
" arrives at *London* in safety, and the said part-owners and
" masters do perform the covenants on their part, and
" not otherwise, well and truly pay and allow the freight
" herein mentioned."

" It is hereby agreed, that in case the ship does not ar-
" rive in safety in the river *Thames*, and there make a right
" delivery of the whole and entire cargo and lading on
" board the said ship as aforesaid, the Company shall not
" be liable to pay any of the sums of money hereinbefore
" agreed to be paid for freight and demurrage, nor subject
" to any demands of the said part-owners or master on ac-
" count of the said ship's earnings in freight, voyages for
" the Company, or on account of any other employment;
" any other law, practice, or custom notwithstanding."

Upon the effect of these clauses a question arose in the case of the ship *York*, which had been chartered by the Company, and on her return home from *India* met with a violent storm off *Margate*, where she was stranded and sunk under water; by this misfortune a great part of her cargo (being saltpetre) was lost; the principal part of the remainder, which consisted chiefly of pepper, was greatly damaged by the sea-water, but was got out of the ship by persons sent down by the Company, and brought to *London* in vessels, where a particular process was employed at a great expence to the Company, to restore it in some degree, and render it marketable. The ship, after being in a great measure unloaded, was with much difficulty raised out of the water, and arrived in the port of *London*, with a small part of the cargo still remaining on board.

The Company contended, that by the construction of the before-mentioned clauses, they were wholly discharged from the payment of any freight or demurrage whatsoever. But a special jury of merchants, before whom the cause was tried, and the Court of King's Bench, by whom the verdict

of

of the jury was reviewed, held, that freight was to be paid for all the goods delivered; and demurrage as specified in the charter-party.

15. The same misfortune also gave occasion to two other questions, which arose in the same cause, upon the meaning of the following clauses in the charter-party, *viz.*

" And if any of the homeward-bound cargo shall be lost " or undelivered into the said Company's warehouses at " the said ship's arrival in *England* (except that no such " payment shall be made if there happens an utter inevi- " table loss of ship and cargo, nor shall any other payment " be made for such goods as shall necessarily perish, or " be cast into the sea for the preservation of the ship and " cargo, than by an average to be borne by ship, freight, " demurrage, and cargo) the part-owners, and master, shall " pay or allow to the Company the prime cost of such " goods, and 30 *l.* for every 100 *l.* on such prime cost."

" But if any of the homeward-bound cargo when deli- " vered into the Company's warehouses in *England,* shall " be found to be prejudiced, wet, or damnified, by any " occasion or accident whatsoever, it shall be lawful for " the Company to refuse such goods, and in such case the " part-owners and master shall take them, and allow to " the Company the sum, which they are invoiced at, with " charges, customs, and duties, and in such case the Com- " pany shall pay no charges or freight for the said goods " so prejudiced, wet, or damnified, unless in case of da- " maged pepper, which the part-owners and masters are " to allow the Company for at the current price of sound " pepper in *London,* and the Company are to pay the " freight and charges on such pepper, as if it were not " damnified."

" But the said part-owners shall not be charged with any " sum of money, in respect of goods damaged on board " the said ship, but such as shall, by the condition and " appearance of the package thereof, or by some other

" reasonable

" reasonable proof, appear to be *ship-damage(t)*; any thing " herein contained to the contrary thereof in any-wise not- " withstanding."

Upon these clauses the Jury, and afterwards the Court of King's Bench, were of opinion, *First*, that the owners were not liable to pay for goods lost or not delivered in consequence of this misfortune, that had befallen the ship. And *Secondly*, that they were not liable to pay or allow for any loss upon the pepper: and as to these points Lord *Mansfield* observed, " The question is, whether the owners " are to pay for the damage occasioned by the storm, the " act of God; and this must be determined by the inten- " tion of the parties, and the nature of the contract. It is " a charter of freight. The owners let their ships to hire, " and there never was an idea that they insure the cargo " against the perils of the sea. The company stand their " own insurers; words must be construed according to the " subject-matter. What are the obligations upon the " owners, which arise out of the fair construction of the " charter-party? why, that they shall be answerable for " damage incurred by their own fault, or that of their ser- " vants, as from defects in the ship, or improper stowage, " such as mixing commodities together which hurt one " another, &c. If they were liable for damages occasioned " by *storms*, they would become insurers *(u)*." " As to " the other point, of the goods lost, the whole is one " entire contract, and must be understood in a manner " consistent with itself, and it never could be intended " that

(t) In the printed form of a charter-party used for the ship ANNA dated Nov. 1809, instead of the words " ship-damage," the following words are used; viz. " received after shipping the goods."

(u) The same question upon the construction of these clauses was submitted to the House of Lords upon a writ of error, in the case of *Tod* v. *The E. I. Company*; the House, after consulting the Judges, decided, according to the unanimous opinion of the Judges, that the owner was not liable to make satisfaction to the Company for the damage done to goods in the ship by *storm*. *May* 20th, 1788.

" that the owners should be protected from the lesser loss " and remain answerable for the greater."

The expence of saving the goods was held to be a general average, and the owners were held responsible for the whole extra expence of bringing the goods up from *Margate*.

16. Upon the effect of the before-mentioned clause, by which it is agreed, *that if the ship shall not arrive in safety in the Thames, the Company shall not be liable for any freight or demurrage, nor subject to any demands of the owners, or master on account of the ship's earnings in freight, voyages for the company, or on account of any other employment*, two questions have arisen. The first arose in the case of the ship *Winchelsea (x)*, which had been let to the Company by a charter-party containing that clause, and whereby the Company had covenanted to load the ship home within *three* months after her arrival in *India*, with a *proviso* however authorizing them to detain her in their service *a year* after the *three* months, at certain rates of demurrage therein specified. The Company detained the ship in their service in *India*, and toward the end of the year after the *three* months sent her to *Fort Saint David's*, where she arrived after the expiration of that year; and the master, upon his arrival, informed the President of that fort, that unless the Company would allow demurrage after the rate of the charter-party, he would protest against them for all damages, loss of time, and other accidents; whereupon the President and Council agreed that the owners should be allowed demurrage for so long time as the ship should be detained in the Company's service in *India*. She was so detained some time longer, and before she had received any lading homeward, was lost in a storm. The owners sued the Company upon the charter-party. After a trial and verdict, and while the case remained for the judgment of the

(x) *Hume* v. *E. I. Company*, 1 Blac. 291. But *query*, whether the form of action was properly adapted to the case.

the Court of King's Bench, the cause was compromised by the Company's paying demurrage from the expiration of the year after the *three* months, until the time of the loss, with the costs. And Lord *Mansfield* then declared, " that " the Court was very clear that the owners were entitled " to no more," but declined giving any other opinion.

16. *b.* The second question arose in the case of the ship *Ganges:* and it arose upon the before-mentioned clause, and another of the clauses in those charter-parties, by which it is agreed that the Company shall pay to the owners in *England* 14*l.* for each passenger *ordered on board* the ship by any of their agents, from any of their settlements. Several passengers were thus ordered on board the ship at *Bombay,* and were received accordingly; the ship was lost on the homeward voyage: the owners claimed to be paid for the passengers, the Company resisted the demand. The Court decided, that this clause did not apply to the case, and that the owners were entitled to the money *(y).* Great part of the expense of bringing home the passengers would necessarily be incurred in laying in provisions for them, before the ship's departure.

16. *c.* The charter-party of the last-mentioned ship gave occasion also to another question. It is stipulated by one of the usual clauses, that if the ship shall arrive at her consigned port in *India* or *China,* the Company's agents shall supply to the master, by way of impress, for buying necessary provisions for the ship 200*l.* for every calendar month, and so in proportion for a less time, so long as she shall remain in *India* or *China,* to be computed from the time of the delivery of the Company's dispatches at her first consigned port in *India* or *China,* and to continue until the ship shall be discharged from her last port in *India* or *China* to return to *Europe.* The *Ganges* was ordered from *England* to *Madras, Prince of Wales's Island,* and

(y) Moffat v. *East India Company,* 10 East, 468. See chapter 7 of this part, sect. 1.

and *China*, and performed her outward voyage, and took in her homeward cargo at *Canton*, with which she sailed for *England*, but meeting with bad weather on the voyage, was obliged to put into *Bombay* to refit. She remained at *Bombay* on this account several months, and was afterwards detained there two months longer by the Governor and Council of that settlement, and then dispatched for *Europe*. The Company had paid the monthly allowance for the period of the ship's stay in *India* and *China* until her departure from *Canton*, and also for the two months of her detention by the Governor and Council at *Bombay*. The owners claimed the allowance for the entire period of her stay at *Bombay*, contending that *Bombay* was her last port within the meaning of this clause. But the Court held that *Canton* was such last port, and consequently that the owners were not entitled to maintain this claim *(z)*.

16. *d.* According to the usual form of these charter-parties, a ship is now let to the Company for the voyage therein mentioned in trade, and also in warfare, and on any other service whatever, as the Company, or any of their Governors, &c. shall require or direct; and it is provided, that during the stay in *India* the Company's Presidents, &c. shall have liberty to employ the ship in trade, and also in warfare and otherwise howsoever, and shall have liberty to let the ship out to freight for the Company's sole benefit, and that the ship shall be furnished and armed with a certain number of guns, &c. specified in the charter-party: and power is given to the Company, their Presidents, &c. to remove, restore and continue the master and officers of the ship; but if the master or other officer be displaced or removed, then the next in degree to the person removed, who shall be approved by the president, &c. shall succeed to the employment. Under the orders of the company's presidencies in *India* the ship *Busbridge* was made to form a part

(z) Moffat v. *East India Company*, 10 East, 468.

a part of a military expedition, intended for an attack upon *Manilla*, in conjunction with some of his Majesty's ships; her upper works were considerably altered to enable her to carry a greater number of guns, her complement of seamen was much increased, soldiers were taken on board, a King's officer assumed the effective command, and hoisted the King's pendant, and the ship sailed from *Calcutta* to *Madras*, and from thence to *Prince of Wales's Island*; the expedition however was abandoned in consequence of a peace with *Spain*. The expence of the alteration of the ship was defrayed by the Company, and an allowance was made to the master for entertaining the King's officer and his suite. The ship sustained some damage in the service, and repairs became necessary on her return to *Bengal*, which were made, and she returned to *England* with her cargo. The owners contended that this employment of the ship was not warranted by the charter-party, and that they were entitled to a separate and distinct payment in respect of it. The Company insisted that the ship was during the whole time employed under the charter-party, and to be paid according to the provisions thereof: the Court was of the latter opinion, and decided accordingly *(a)*.

17. I have said that the construction of charter-parties shall be conformable to the usage of trade. Accordingly at the trial before Lord *Kenyon* of an action on a charter-party, by which it was stipulated that the merchant should have the exclusive use of the ship outwards, and the exclusive privilege of the cabin, the master not being allowed to take any passengers, at which trial the defendants insisted that under a charter-party so worded, it was the constant usage of trade to allow the master to take out a few articles for private trade; his lordship suffered evidence to be given to prove this usage, observing, that although *primâ facie* the deed excluded this privilege, yet he thought the

(a) Dobree and others v. *East India Company*, 13 East, 290.

the deed might be explained by uniform and constant usage, the usage being a tacit exception out of the deed *(b)*.

By a charter-party, the merchant covenanted to furnish a full cargo at *Charles Town* or *New Orleans*, at his option, for which freight was to be paid if the goods were shipped at *New Orleans*, for cotton, in round bales, 3*d*. per pound, and in square bales, 2¾*d*. per pound; and for rice, of which he was at liberty to load not more than one hundred and fifty tons, 8*l*. 8*s*. per ton. The ship did not obtain a cargo at *Charles Town*, and was ordered to *New Orleans*. It was the established and uniform practice of the latter place, though not of *Charles Town*, to re-compress, by means of steam-engines, all cotton intended for exportation, unless the ship was unable to get a full cargo; the merchant loaded the ship with cotton only, of which, if re-compressed, the ship would have contained one hundred and seventy tons above the cargo actually shipped. The quantity actually shipped was not a sufficient cargo, even of bales not re-compressed, and the merchant was held liable to pay the value of the freight of the additional one hundred and seventy tons, and without any allowance in respect of the lower rate of freight for rice. Rice, if laden, must have been put into the ship before cotton; and therefore the merchant was considered to have elected to furnish an entire cargo of cotton *(c)*.

18. But although the words of a charter-party may receive a liberal construction, yet the construction must not be inconsistent with their plain and obvious meaning. And therefore in the case of a charter-party, by which a ship

(b) Donaldson & another v. *Forster & others*, Guildhall Sittings, p. Mich. Term, 29 *Geo.* 3. Upon the evidence his Lordship thought the usage was proved, and *eleven* of the jurymen wished to find a verdict accordingly, but the *twelfth* insisting that he could not conform to the general opinion, as this was a positive contract, a juror was withdrawn by consent, and no verdict pronounced in the cause.

See the observations made by Lord *Eldon*, on the maxim of construing a mercantile instrument by usage, in the case of *Anderson* v. *Pitcher*, 2 Bos. & Pull. 164. And see 2 Vesey, 331.

(c) Benson v. *Schneider*, 7 Taunton, 272. 1 Moore, 21.

ship was to sail from *London* to join convoy, and proceed from thence to *Barcelona*, and there deliver her cargo; and *forty-one* running days were to be allowed to wait at *Portsmouth* for convoy, and to discharge the cargo at *Barcelona*, the said *forty-one* days to be accounted and commence at *Portsmouth twenty-four* hours after her arrival there, and at *Barcelona* the day the ship should be ready to deliver her cargo, and for all the time beyond the *forty-one* days *thirteen* shillings *per ton* were to be allowed for demurrage; Lord *Kenyon* held that the demurrage was only payable for delay beyond the *forty-one* days in waiting for convoy at *Portsmouth*, and in discharging the cargo at *Barcelona*, and not for the delays which the ship had experienced in waiting for convoy at *Falmouth*, to which place she was ordered to proceed from *Portsmouth* by the admiral's secretary; and at *Gibraltar-Bay*, into which she sailed under the direction of one of the sloops appointed to convoy the fleet, the rest having been dispersed in a storm, and where she waited *twelve* days for convoy to proceed to *Barcelona (d)*.

It is probable that if the events, which took place in the course of this voyage, had been foreseen by the parties, the number of days would not have been confined to waiting for convoy at *Portsmouth* only, but would have been expressed to be for waiting for convoy generally; but to have put such a construction upon this instrument, would have been to substitute other words for those, which the parties to it had thought proper to use. And the reader will observe, that in this case there was not (nor indeed could have been) any general usage of trade applicable to the stipulation in question.

19. When goods are put on board in pursuance of a charter-party, the master is to sign for them bills of lading to the effect mentioned in the ensuing chapter. The charter-party being the instrument and evidence of the contract for the conveyance, and the bill of lading the evidence of the shipping

(d) *Marshall* v. *De la Torre*, 1 Esp. N. P. cases, 367.

shipping of the particular merchandize to be conveyed in pursuance of the contract. But the master cannot be required to express in the bills of lading a less rate of freight than is mentioned in the charter-party. And in a case in which the agent of a merchant tendered at *Jamaica* a cargo of sugar, but insisted that the master should sign bills of lading for it at the rate of 10*s.* per hundred only, the rate mentioned in the charter-party being 10*s.* 6*d.* per hundred, and the master refused to receive the cargo on those terms, the merchant was held answerable on his covenant to load the ship, as he would have been if no cargo had been tendered *(e)*.

(e) *Hyde* v. *Willis*, 3 Campbell, 202.

CHAPTER THE SECOND.

OF THE CONTRACT FOR CONVEYANCE OF MERCHANDIZE IN A GENERAL SHIP.

1. THE contract for the conveyance of merchandize in a *general* ship is that, by which the master and owners of a ship, destined on a particular voyage, engage separately with various merchants unconnected with each other, to convey their respective goods to the place of the ship's destination. It has been already shown *(a)* that this contract, although usually made personally with the master, and not with the owners, is considered in law to be made with them also, and that both he and they are separately bound to the performance of it.

2. When a ship is intended to be thus employed, it is usual in *London*, and other places, to give notice of the intention by printed papers and cards, mentioning the name and destination of the ship; her burthen and sometimes her force; and sometimes expressing also that the ship is to sail with convoy, or with the first convoy for the voyage, or other matters relating thereto. At a trial at *nisi prius*, in the 40th *Geo.* 3, it was said by the Jury, that among merchants this expression was understood to be an assurance or warranty to the merchant, who laded goods in pursuance of the advertisement, and to become a part of the contract with him, although not afterwards contained in the bill of lading.

This dictum, where convoy is not mentioned in the bill of lading, must be considered as very doubtful. In an action afterwards brought by a person who had shipped goods on board

(a) Ante, part 2. ch. 2.

board a general ship, for *Grenada*, against the owner, for having sailed without convoy, in consequence of which he had lost the benefit of an insurance which he had effected, the ship having been captured on the voyage; it appeared at the trial that the ship had been put up or advertised "to "sail with convoy;" but that the bill of lading made no mention of convoy; that it was in fact intended that the ship should sail with convoy, but that she was blown out of the *Downs* in a gale of wind, and the master then intended to go into *Falmouth*, to wait for the convoy; but being prevented from doing so by the appearance of a *French* privateer, by which he was chased, he made sail for *Grenada*, and was afterwards taken.

At the trial the defendant obtained a verdict; the Court was afterwards moved to grant a new trial, and the case was argued at some length. A new trial was granted, in order that the Court might receive further information; and the attention of the counsel was directed to the following points: Whether the concise expression, "to sail with convoy," meant any thing more than that the ship *was intended* to sail with convoy; or could be construed as a *warranty* that the ship should sail with convoy, in the strict sense of the word warranty; what was the effect of the bill of lading, which made no mention of convoy; what was the effect of the endeavours used by the master to sail with convoy, and of the circumstances by which he had been prevented from doing so. The cause was not taken down to a second trial *(b)*.

In a subsequent case, before Lord Chief Justice *Gibbs*, at *nisi prius*, where the bill of lading expressed that the ship was bound for *London* with convoy, that very learned Judge held that the bill of lading amounted to an undertaking that the ship should sail with convoy *(c)*. And in a similar case that occurred before Lord *Ellenborough*, at *nisi prius*, the point was not contested. The defendant, however, succeeded

(b) *Snell* v. *Marryatt*, in K. B. 48 *Geo.* 3.

(c) *Saunderson* v. *Busher*, 4 Camp. 54 in note.

ceeded on the ground that his not sailing with the convoy arose from the fault of the shipper *(d)*.

3. When goods are sent on board the ship, the master or person on board acting for him, usually gives a receipt for them, and the master afterwards signs and delivers to the merchant sometimes two, and sometimes three, parts of a bill of lading, of which the merchant commonly sends one or two to his agent, factor, or other person, to whom the goods are to be delivered at the place of destination, that is, one on board the ship with the goods, another by the post or other conveyance; and one he retains for his own security: The master should also take care to have another part for his own use. The master must make out his bill of lading, according to the direction of the shipper of the goods, or the holder of the receipt given on the shipment, for the shipper has a right to name the consignee to be mentioned in the bill of lading, even although it may not be expressed in the receipt that the goods are shipped for his account, this being tacitly understood; and if the master signs a bill of lading for delivery to another person, and delivers accordingly, he may be answerable to the shipper for the value of the goods *(e)*.

OLD FORM OF A BILL OF LADING.

I. W. } SHIPPED, by the grace of God, in good
N° 1. a 20. } order, by A. B. merchant, in and upon the good ship called the *John and Jane*, whereof C. D. is master, now riding at anchor in the river of *Thames*, and bound for *Barcelona* in *Spain*, 20 bales, containing 100 pieces of broad cloth, marked and numbered as *per* margin; and are to be delivered in the like good order and condition at *Barcelona* aforesaid (*the dangers of the seas excepted,*) unto E. F. merchant

(d) Magalhaem v. *Busher*, 4 Camp. 54.

(e) Craven & another v. *Ryder*, 6 Taunt. 433. and 2 *Marshall*, 127.

merchant there, or to his assigns, he or they paying for the said goods *per* piece freight, with primage and average accustomed. IN WITNESS whereof, the master or purser of the said ship hath affirmed to three bills of lading of this tenor and date, one of which bills being accomplished, the other two to stand void. And so God send the good ship to her designed port in safety.

DATED at *London*, the day of

The terms of this exception were altered some years ago, in consequence of an alarm taken by the ship-owners, at the decision of a cause, that will be mentioned in a subsequent chapter *(f)*; and of late the exception is usually made in the following words; (" *The act of God, the King's* " *enemies, fire, and all and every other dangers and accidents* " *of the seas, rivers, and navigation, of whatever nature and* " *kind soever, excepted.*") But in the case of ships homeward bound from the *West India* islands, which send their boats to fetch the cargo from the shore, there is introduced a saving out of this exception " of risk of boats, so far as " ships are liable thereto." And in that case the whole clause is as follows: " *The act of God, the King's enemies,* " *fire, and all and every other dangers and accidents of the* " *seas, rivers, and navigation, of whatever nature and kind* " *soever, save risk of boats, so far as ships are liable thereto,* " *excepted*;" but these additional words are probably redundant; they do not make the owner liable for a loss in boats, to which he would not be liable in the ship, where boats are customarily used *(g)*. Other clauses may be introduced, either to take away the responsibility of the master and owners in cases for which they would otherwise be responsible, or to give to them or to the shippers an advantage

(f) *Smith* v. *Shepherd*, post. chap. 4. of this part, sect. 1.

(g) See the case of *Johnston* v. *Benson*, 4 B. Moore, 90. and chap. 4. of this part. sect. 5.

tage to which they would not otherwise be entitled. Instances of this kind, providing for a payment in the nature of demurrage, have been already noticed *(h)*.

In the above-mentioned form of a bill of lading the name of a consignee is mentioned, but sometimes the shipper or consignor is himself named as consignee, and the engagement is expressly to deliver to him or his assigns; and sometimes no person is *named* as consignee, but the terms of the instrument are, "*To be delivered, &c. unto* "*order, or assigns,*" which words are generally understood to import an engagement on the part of the master to deliver the goods to the person, to whom the shipper or consignor shall order the delivery, or to the assignee of such person. This subject will be further considered in a subsequent chapter *(i)*.

It is proper, however, to notice here, that if the person to whom the delivery may be so ordered is only an agent for the shipper, and has no property in the goods, he cannot maintain an action *in his own name* against the master for not delivering them *(k)*.

In a case, wherein the master by the bill of lading acknowledged to have received goods of *Bayo & Son*, and undertook to deliver them to *them* and in *their* name, according to custom and usage, to *Sargent* or his assigns, paying freight, &c. and it was proved that the goods were shipped on the account and risk of *Bayo & Son*; *Sargent* was not allowed to maintain in his own name, an action against the master for injury to the goods, although it appeared that he had effected an insurance on them *(l)*.

4. If there is any dispute about the quantity or condition of the goods, or if the contents of casks or bales are unknown, the words of the bill of lading should be varied accordingly.

By

(h) See *Harman* v. *Clarke & others. Same* v. *Mant & others*, 4th Campbell, p. 159 and 161. *Leer* v. *Yates*, 3 Taunt. 387: and see before p. 181.

(i) Ch. 9. of this part. *Of Stoppage in Transitu.*

(k) *Waring* v. *Cox*, at Guildhall, before Lord *Ellenborough*, Ch. J. Sit. after East. Term, 1808.

(l) *Sargent* v. *Morris*, 3 B. & A. 277.

By the *French* Ordinance it is required, that bills of lading should contain the quality, quantity and marks of the merchandize, the name of the merchant who loads them, and of the person to whom they are to be delivered, the place of departure and destination, the names of the master and the ship, and the price of the freight *(m)*.

It is obvious that the quality, and frequently also the quantity, of the goods must be unknown to the master; and the commentator *(n)* on the Ordinance informs us, that by the quality the exterior and apparent quality only is meant; and further, that it is usual for the master to insert words, denoting that the quality and quantity are only according to the representation of the merchant; of which practice he approves, and mentions two disputes decided in favour of the master in consequence of this precaution.

5. Some of the more ancient writers on maritime law, mention the case of goods put on board a ship without the knowledge or consent of the master or owners. It is evident that in such a case no contract for conveyance is made, but nevertheless the master upon delivery of them, will be entitled to the usual freight for the voyage.

Having thus considered the several particulars belonging distinctly to the two different species of contract, for the conveyance of merchandize by sea, I proceed in the following chapters of this third part, to treat of those general circumstances which may belong to both.

(m) Liv. 3. tit. 2. *Des Connoissemens*, art. 2. So also the Code de Commerce, art. 281.

(n) Valin, ubi supra.

CHAPTER THE THIRD.

OF THE GENERAL DUTIES OF THE MASTER AND OWNERS.

1. IN whatever way the contract for the conveyance of merchandize be made, the master and owners are thereby bound to the performance of various duties of a general nature. I propose to treat of these duties in the present chapter, and shall consider them as they regard, FIRST, The Preparation for the Voyage; SECONDLY, The Commencement; THIRDLY, The Course; and, LASTLY, The Completion of the Voyage.

2. And, FIRST, as to the Preparation for the Voyage: The first duty is to provide a vessel tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage *(a)*. For if the merchant suffer loss or damage by reason of any insufficiency of these particulars at the outset of the voyage, he will be entitled to a recompence. An insufficiency in the furniture of the ship cannot easily be unknown to the master or owners: but in the body there may be latent defects unknown to both. The *French* Ordinance directs, that if the merchant can prove, that the vessel, at the time of sailing, was incapable of performing the voyage, the master shall lose his freight, and pay the merchant his damages and interest *(b)*. *Valin*, in his commentary on this article, cites an observation of *Weitson*, "That the punishment of the master in this case ought "not to be thought too severe, because the master by the "nature of the contract of affreightment, is necessarily "held

(a) Emerigon, tom. 1. p. 373, 374, 375. *Roccus*, not. 19, 57. 69. Ordinance of *Rotterdam*, 2 *Magens*, p. 101. art. 124. *Molloy*, book 2. ch. 2. sect. 10. *Wellwood's Sea Laws*, tit. 7. p. 22.

(b) Liv. 3. tit. 3. *Fret.* art. 12

" held to warrant that the ship is good, and perfectly in a " condition to perform the voyage in question, under the " penalty of all expences, damages, and interest." And he himself adds that this is so, although before its departure the ship may have been visited according to the practice in *France*, and reported sufficient; because on the visit the exterior parts only of the vessel are surveyed, so that secret faults cannot be discovered " for which, by conse- " quence," says he, " the owner or master remains always " responsible; and this the more justly, because he can- " not be ignorant of the bad state of the ship; but even " if he be ignorant, he must still answer, being neces- " sarily bound to furnish a ship good and capable of the " voyage." *Pothier (c)*, taking notice of this article, and of the commentary upon it, declares his own opinion (in conformity, as he observes, to the general principles of law established in his own treatise on the contract of letting to hire) to be, that if the ship has been visited and reported sufficient, the master or owner shall not be answerable for damages occasioned by a defect, which they did not, nor could know; but he agrees that they shall lose their freight. It may be observed, however, that defects of this sort cannot exist, unless occasioned by the age or particular employment of the ship, or some accidental disaster that may have happened to it; all of which ought to be known to the owner, and ought to lead to an examination of the interior as well as exterior parts. And indeed this contract, although greatly partaking of the nature of the contract of letting to hire, is not precisely the

(c) *Traité de Charte-partie*, num. 30. The author here refers to his own excellent *Traité de Louage*, part 2. ch. 1. sect. 4. par. 2. But it rather appears to me that the rules there laid down by himself, warrant the conclusion that in this instance the owner and master ought to be responsible for the loss, " Lorsque " le locateur devoit par sa profes- " sion être informé du vice de la " chose louée, il est tenu de domage " et intérêts du conducteur, sans " qu'il soit besoin de chercher, si " effectivement il en a eu connois- " sance ou non:" And he instances the cases of a cooper or shopkeeper letting casks made of bad wood.

the same, but includes in itself a warranty beyond that which is contained in the contract for letting to hire. In a charter-party the person who lets the ship, covenants, that it is tight, staunch, and sufficient; if it is not so, the terms of the covenant are not complied with, and the ignorance of a covenantor can never excuse him. And with regard to a general ship, Chief Justice *Holt*, in his elaborate argument on the law of bailments, distinguishes the contract made for the carriage of goods from the contract of letting to hire; and speaking of the former, when made by a person in a public employment, says, "The law charges the per-" son (*viz.* common carrier, hoyman, master of a ship,) " thus entrusted to carry goods, against all events but " acts of God and of the King's enemies;" so that a common carrier is an insurer against all perils or losses not within the exception *(d)*. And the contract of insurance properly so called, is clearly void, if the ship, at the commencement of the voyage, be not sea-worthy, although the person who has effected the insurance be ignorant of that circumstance *(e)*.

Indeed in a case, in which it appeared that the owner of a lighter employed in conveying goods from a quay at *Hull* to sloops in the dock, had together with many other persons engaged in the same business, given public notice, " That they would not be answerable for any loss or " damage, which should happen to any cargo, which " should be put on board any of their vessels, unless such " loss or damage should happen or be occasioned by want " of ordinary care and diligence in the master or crew of " the vessel; when and in such case they would pay to " the sufferers 10 *l.* per centum upon such loss or damage, " so as the whole amount of such payment should not " exceed the value of the vessel on board whereof such " loss or damage should have happened, and the freight of

(d) Coggs v. *Bernard*, 2 Lord Raym. 909.

(e) Park on Insurance, ch. 11.

" of such vessel." And they gave further notice, " That " any merchant or other person desirous of having their " goods or merchandizes carried *free of any risk*, in respect " of loss or damage, whether the same should happen " from the *act of God* or *otherwise*, might have the same " so carried by entering into an agreement for the payment " of an *extra freight* proportionable to the accepted re- " sponsibility, on application to them or their respective " agents:" It was held that the owner was answerable to the full extent of the damage done to goods by reason of the leakiness and insufficiency of his lighter, although the merchant was acquainted with the notice before he sent the goods on board. In delivering the judgment of the court on this occasion, the learned Chief Justice (Lord *Ellenborough*) said, " In every contract for the carriage of " goods between a person holding himself forth as the " owner of a lighter or vessel ready to carry goods for hire, " and the person putting goods on board or employing " his vessel or lighter for that purpose, it is a term of the " contract on the part of the carrier or lighterman *implied* " *by law*, that his vessel is tight, and fit for the purpose " or employment for which he offers and holds it forth to " the public: it is the very foundation and immediate " substratum of the contract that it is so: the law pre- " sumes a promise to that effect on the part of the carrier " without any actual proof; and every reason of sound " policy and public convenience requires it should be so." And the Court considered the insufficiency of the lighter " as a personal neglect of the *owner*, or more properly as " a non-performance on *his* part of what he had under- " taken to do, *viz.* to provide a fit vessel for the purpose;" and thought it clear that the only object of the notice " was to limit the responsibility of the owners, in those " cases only where the law would otherwise have made " them answer for the neglect of *others*, and for *accidents* " which it might not be within the scope of ordinary care " and caution to provide against *(f)*.

(f) Lyon & another v. *Mells*, 5 East, 428.

And not only must the ship and her furniture be sufficient for the voyage, but she must also be furnished with an adequate number of persons of competent skill and ability to navigate her. And, for sailing down rivers, out of harbours, or through roads, &c. where, either by usage, or the laws of the country, a pilot is required, a pilot must be taken on board *(g)*. But no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person whatsoever, from or by reason or means of no licensed pilot being on board, or of no duly qualified pilot being on board, unless it shall be proved that the want of such licensed or qualified pilot shall have arisen from any refusal to take such pilot on board, or from the wilful neglect of the master in not heaving to, or using all practicable means consistently with her safety, for the purpose of taking on board any pilot, who shall be ready and offer to take charge of the ship *(h)*.

3. The manner of taking goods on board, and the commencement of the master's duty in this respect, depend on the custom of the particular place. More or less is to be done by wharfingers or lightermen according to the usage. If the master receive goods at the quay or beach, or send his boat for them, his responsibility commences with the receipt *(i)*. In the port of *London*, with respect to goods intended to be sent coastwise, it has been held that the responsibility of the wharfinger ceases by delivery of them to the *mate* of the vessel upon the wharf *(k)*. As soon as any goods are put on board, the master must provide

(g) *Emerigon*, tom. 1. p. 375. *Molloy*, book 2. ch. 2. sect. 7. *Roccus*, not. 59. 62. *French* Ordinance, Liv. 2. tit 1. *Du Capitaine*, art. 8.
Ordin. of *Wisbuy*, art. 59, 60. - - - - } As to Pilot.
Ordin. of *Antwerp*, 2 *Magens*, p. 16. art. 9 - - }
Wellwood's Sea Laws, p. 23. 26. - - - }
Ordin. of *Rotterdam*, 2 *Magens*, p. 103. art. 139. }
Ante, part 2. c. 5. - - - - - - }
(h) 6 *Geo.* 4. *c.* 125. *s.* 53. See Appendix.
(i) *Molloy*, book 2. ch. 2. sect. 2. *Roccus*, not. 88. *Wellwood*, tit. 9. *Dig.* 4. 9. 3.
(k) *Corban & another* v. *Downe*, 5 Espin. N. P. C. 41.

vide a sufficient number of persons to protect them *(l)*; for, even if the crew be overpowered by a superior force, and the goods stolen, while the ship is in a port or river within the body of a county, the master and owners will be answerable for the loss, although they have been guilty of neither fraud nor fault: the law in this instance holding them responsible from reasons of public policy, and to prevent the combinations that might otherwise be made with thieves and robbers.

It is usual for the master or mate to sign a receipt for goods at the time of the shipment, and deliver it to the shipper. When this is done, the master must take care not to deliver a bill of lading until the receipt is returned to him; for otherwise he may place himself under a two-fold responsibility; a responsibility to the shipper, in case he shall require the goods to be delivered to his own order, and have a legal right to do so; and a responsibility to a holder of the bill of lading, who may be induced to purchase the goods on the faith of it *(m)*. And if such a receipt is required, it ought to be given, and if not given, still

(l) Morse v. *Slue*, 1 Vent. 190. 238. Sir T. Raym. 220. *Rich* v. *Kneeland*, Hob. 17. 2 Cro. 330. *Dig.* 4. 9. 1. 1. "Nisi hoc esset statutum, "materia daretur cum furibus adversus eos, quos recipiunt, coeundi, cum ne nunc quidem abstineant hujusmodi fraudibus." But the word *fures* here means *thieves* only, and not *robbers*, who come with a superior and irresistible force; *they* are called *latrones*: thus by the *Digest*, 17. 2. 52. 3. A partner, who has the care of the joint property, is not answerable, "si id *latrocinio* aut "incendio perierit," but he is answerable, "si a *furibus* subreptum "sit:" Upon which *Gothofred* observes, "adversus *latrones* parum "prodest custodia;—adversus *fures* "prodesse potest, si quis advigilet. "*Latrocinium* fatale damnum, seu "casus fortuitus est; at non *furtum*." And the words of the *Digest*, title Nautæ caupones stabularii, &c. 4. 9. 3. are, "nisi si quid "damno fatali contingat; inde Labeo scribit, si quid naufragio, aut "per vim piratarum perierit, non "esse iniquum exceptionem ei dari; "idem erit dicendum si in stabulo "aut in caupona vis major contigerit." So that our law at present is stricter in the case of carriers, than the civil law; but it is said to have been the same formerly, and not to have charged a carrier in the case of robbery, unless he travelled by dangerous ways, or at unseasonable hours. See *Jones* on *Bailments*, p. 103.

(m) Craven & another v. *Ryder*, 6 Taunt. 433; and 2 Marshall, 127; and see *Hawes & another* v. *Watson & another*, 2 B. & C. 540.

still the master must take care not to deliver a bill of lading to any person but the shipper without his orders, for if he does, he may incur a two-fold responsibility in the same way, as if the required receipt had been given *(n)*.

It is in all cases the duty of the master to provide ropes, &c. proper for the actual reception of the goods into the ship *(o)*. And if a cask be accidentally staved in letting it down into the hold of the ship, the master must answer for the loss *(p)*. The ship must also be furnished with proper dunnage (pieces of wood placed against the sides and bottom of the hold) to preserve the cargo from the effects of leakage, according to its nature and quality *(q)*. And care must be taken by the master (unless by usage or agreement this business is to be performed by persons hired by the merchant) so to stow and arrange the different articles, of which the cargo consists, that they may not be injured by each other or by the motion or leakage of the ship *(r)*. And more must not be taken on board, than the ship can conveniently carry, leaving room for her own furniture and the provisions of the crew, and for the proper working of the vessel *(s)*. Neither may the master take on board any contraband goods, whereby the ship and other parts of the cargo may be liable to forfeiture or detention *(t)*.

4. The master must also take on board no false or colourable papers, that may subject the ship to capture or detention *(u)*; and he must procure and keep on board all

(n) *Ruck* v. *Hatfield*, 5 B. & A. 632.

(o) Laws of *Oleron*, art. 10. Laws of *Wisbuy*, art. 22. *Wellwood*, tit. 9.

(p) *Goff* v. *Clinkard*, cited 1 Wils. 282.

(q) Ordin. of *Rotterdam*, 2 *Magens*, 101. Art. 125. 126.

(r) *Wellwood*, p. 29. Ordin. of *Antwerp*, 2 *Magens*, p. 16. art. 8. *French* Ordinance, liv. 2. tit. *Du Capitaine*, art. 12. Laws of *Wisbuy*, art. 23. Laws of *Oleron*, art. 11. and *Cleriac* thereon.

(s) *Roccus*, not. 30. Ordin. of *Rotterdam*, 2 Magens, p. 102. art. 127.

(t) *Molloy*, book 2. ch. 2. sect. 7. *Roccus*, not. 66. *Wellwood*, tit. 9.

(u) *Guidon*, chap. 5. art. 33. *Molloy*, book 2. ch. 2. sect. 9. See also *Horneger* v. *Lushington*, and *Oswell* v. *Vigne*, 15th East 46. ibid. 70. as to the effect of carrying simulated papers on a policy of insurance

all the papers and documents required for the manifestation and protection of the ship and cargo by the law of the countries, from and to which the ship is bound, and by the law of nations in general, and treaties between particular states *(x)*. The rule of the *French* Ordinance on this subject is, that the master must have on board, the charter-party and other documents relating to the proof of his lading *(y)*. *Valin*, in his commentary on the Ordinance, says, that this article relates chiefly to a time of war, and that if a ship should be condemned as good prize on account of the master's failure in this respect, he must answer for the event. I have confined the rule in the manner above expressed, because it would be unjust to charge the master or owners for *some* cases of omission, upon which ships were condemned in *France* during the late wars, although the terms of the condemnation were such as to discharge the insurers from their responsibility, according to the established rule of the law of nations, which holds the sentence of a foreign court to be conclusive of the fact, upon which it is founded; and to which rule the courts of justice in this country adhered with the dignity belonging to regular and permanent establishments.

Where by the terms of a charter-party, a number of days is appointed for the lading of the cargo, the master must not sail before the expiration of the time, and if a further period is allowed by a clause of demurrage, he must wait that period also if required to do so.

5. SECONDLY, as to the Commencement of the Voyage.

All things being prepared for the commencement of the voyage,

surance not containing permission so to do.

(x) As to the manifest or written contents required for the importation of goods into *Great Britain*. See 6 *Geo.* 4. *c.* 107. *s.* 3. to 7. As to the *coasting* trade, see same *statute*, *s.* 100 to 114.

(y) Liv. 3. tit. 1. *Charte-parties*, art, 10, and *Valin* thereon. See also *Pothier*, Charte-partie, numb. 31.

voyage, the master must forthwith obtain the necessary clearances, or permission to sail, from the officers of the customs, or others, appointed for the discharge of vessels *(z)*, and pay *(a)* the necessary port and other charges for that purpose, and commence his voyage without delay, as soon as the weather is favourable *(b)*. But he must on no account sail out during tempestuous weather *(c)*. By most of the ancient marine ordinances, the master is required before he hoists sail to consult his mate, pilot, and others of the crew, as to the wind and weather *(d)*, but I apprehend such consultation is not required by the law of *England*, according to which the entire management of the ship is intrusted to the master.

6. If there has been an undertaking or warranty to sail with convoy *(e)*, the vessel must repair to the place of rendezvous for that purpose, and the master must put himself under the protection and controul of the ships of war appointed under the authority of the government for the guard of merchant vessels, bound to the place of his destination. A warranty that the vessel shall sail with convoy is very common in a policy of insurance, and in that case, if it be not complied with, the insurance becomes absolutely void, and the insurers are not answerable for a loss happening by tempest or other accident wholly independent of the subject of the warranty, for which they would otherwise be liable, nor in many cases bound to return the premium; but if

(z) As to the entry and clearance of ship and goods on exportation from any place in the United Kingdom or *Isle of Man*, see 6 *Geo.* 4. *c.* 107. *s.* 55 to 80.

(a) *Guidon*, ch. 5. art. 33. *Molloy*, book 2. ch. 2. sect. 9.

(b) *Ante*, ch. 1. of this part, sect. 12. p. 191. Ordin. of *Rotterdam*, 2 *Magens*, p. 102. art. 128.

The Ordin. of the *Hanse Towns* allows *two* or *three* days.

(c) *Molloy*, book 2. ch. 2. sect. 4. *Roccus*, not. 56.

(d) *Wellwood*, tit. 8. p. 26. Ordin. of *Antwerp*, 2 *Magens*, p. 17. art. 11. *Emerigon*, tom. i. p. 376.

This author also observes, that, although the master is bound on this and other occasions to ask the advice of his crew, yet he is not bound to submit blindly to it, if it is bad, or if under the circumstances it appears to be bad.

(e) The cases relating to convoy will be found at the end of this section.

if the warranty be made by the master or owner to the merchant, and not complied with, the master or owner may be responsible for a loss happening by tempest or other accident, for which otherwise the master or owner would not be liable; and even if the ship arrive safe, may be bound to compensate the merchant for the loss of the advantage of return of premium *(f)*. The merchant having trusted to this warranty of the master or owner, and in confidence of its performance made a similar warranty in his contract with the insurers, and having lost the benefit of his insurance, or of a return of premium, by the breach of the warranty on the part of the master and owners, has a right to receive from them whatever he has lost by their misconduct. This warranty has been so fully and ably treated by Mr. *Park (g)*, in his valuable book on insurance, that I should forbear to enter upon it here, did not a reference to the several decided points and authorities on the subject appear absolutely necessary in this place.

The convoy must be a ship or ships of war appointed under the authority of the government, that is, immediately by the government, or by the commander in chief on a particular station. The protection of a ship of war accidentally bound on the same voyage, although discharging the office of a convoy, is not a convoy within the meaning of this warranty *(h)*.

But this warranty to sail or depart with convoy, does not mean that the vessel shall depart with convoy immediately from the lading port, but only from the place of rendezvous appointed for vessels bound from that port. From many ports, and among others from the port of *London*, no convoy,

(f) Sanderson & others v. *Busher*. 4 Campbell, 54 in note.

(g) Park on insurance, chap. 18. The same subject is also very fully discussed in Mr. Serjeant *Marshall's* excellent treatise on the Law of Insurance, published about the same time as the first edition of this book.

(h) Hibbert v. *Pigou*. Park on Insurance, chap. 18.

voy ever sails. It has therefore been held sufficient for a vessel bound from *London*, to sail with convoy from the *Downs (i)*; and even from *Spithead*, when there was no convoy appointed at the *Downs (k)*. It has also been held that a vessel is not bound to put herself, between the loading port and place of rendezvous, under the protection of a convoy intended for ships *on other destinations (l)*.

Neither does it require the vessel to sail with convoy bound to the precise place of her destination. But if the vessel sail with the only convoy appointed for vessels going to the place of her destination, it is sufficient. Thus where a policy had been effected on goods on board a ship called the *Little Betsey*, on a voyage at and from *London* to *Saint Sebastian* in *Spain*, warranted to depart with convoy for the voyage, and at the trial of an action brought against the underwriters, it appeared that no convoy was appointed directly to *Saint Sebastian*, but that the *Little Betsey* sailed under convoy of a squadron of frigates, the commander of which had orders from the Admiralty to take with him the *Weazle* and another frigate and proceed to *Gibraltar*, and to take with him such ships as should be at *Spithead* bound to *Bilboa* (which is very near and in the course to *Saint Sebastian*) and to detach the *Weazle* with the latter, with orders to see them safe to *Bilboa*; and on the voyage the commodore made a signal for the *Weazle* to part company, and take with her such ships as were bound to *Bilboa* and *Saint Sebastian*, in obedience to which the *Weazle* parted company, and took with her the *Little Betsey* and other ships bound for *Bilboa* and *Saint Sebastian*, but soon after parted with them in chace of a strange ship, and did not afterwards join them; a jury of merchants, to whom Chief Justice *Eyre* left the question, determined this to be a sailing with convoy according to the meaning of the warranty, and

(i) *Lethulier's* case, 2 Salk. 443.
(k) *Gordon* v. *Morley*, 2 Stra. 1265.
(l) *Warwick* v. *Scott*. 4 Campbell, 62.

the Court of Common Pleas afterwards approved of the verdict *(m)*.

In the case just quoted, the convoy, under which the vessel sailed, was in effect the convoy for the whole voyage, although not intended actually for *Saint Sebastian*. It sometimes happens that the force first appointed is to accompany the ships only for a part of their voyage, and to be succeeded by another; at other times a small force is detached from the main body to bring them up to a particular point: if a vessel sail under the protection of the force thus appointed *(n)*, or detached *(o)*, the warranty is satisfied.

But this warranty requires not only that the vessel shall commence the voyage under the protection of the convoy, but also that she shall continue during its course under the same protection *(p)*, unless prevented from so doing by tempest or other unavoidable accident, in which cases the master and owners will be excused, if the master does all that is in his power to keep the benefit of the convoy *(q)*.

Neither is it sufficient for the master to sail in company with the ships of war appointed as the convoy, but he must before the departure obtain, or at least use all due diligence to obtain, the sailing instructions and orders delivered out by the commander of the convoy to the masters of the trading vessels, that are to sail under his protection. The necessity of obtaining such orders, if possible, is fully established by the two cases of *Webb* v. *Thomson (r)*, and *Anderson* v. *Pitcher*, in the Court of Common Pleas *(s)*; in the last of which Lord *Eldon* observes, "It being once "decided, that a convoy within the terms of the policy, "means

(m) *D'Eguino* v. *Bewicke*, 2 Hen. Black. 551.
(n) *Smith* v. *Readshaw*, Park, ch. 18. *De Garay* v. *Clagget*, ibid.
(o) *Manning* v. *Gist*, Marshall, book 1. ch. 8. sect. 4. *Audley* v. *Duff*, 2 Bos. & Pull. 111.
(p) *Lilly* v. *Ewer*, Doug. 72.
(q) *Jeffrey* v. *Legendra*, Carth. 216. 3 Lev. 320.
(r) *Webb* v. *Thomson*, 1 Bos. & Pull. 5.
(s) *Anderson* v. *Pitcher & Wife*, 2 Bos. & Pull. 164.

" means a convoy appointed by government, it seems to " follow of necessity that the ship must depart with sailing " instructions, if by the due diligence of the master they " can be obtained. The value of a convoy appointed by " government in a great measure arises from its taking the " ships under control as well as under protection. But " that control does not commence until sailing instructions " have been obtained; nor can it be enforced otherwise " than by their means. Indeed the reason of that rule, " which requires that the convoy should be appointed by " government, shews the necessity of having sailing in- " structions; since without them the ship does not stand " in that relation, or under those circumstances, in which " she can take the full benefit of the government convoy. " If the fleet be dispersed by a storm, how is she to learn " the place of rendezvous? If it be attacked by the enemy, " how is she to obey signals? In short, what communi- " cation can the protected have with the protecting force? " It has been contended, that if she be under the protection " of the guns, it is sufficient. But will it be contended " that, provided she be under the protection of the guns " at her departure, though sailing instructions be never " obtained during the voyage, or not till the last day of " the voyage, the warranty is complied with? Either " sailing instructions are not necessary, or, if they be " necessary, they must be so at some given period, and " can only be dispensed with in some particular cases. " Then can any other period be assigned but the beginning " of the voyage?"

Each of these two cases arose from the loss of the same vessel, the *Golden Grove*, which had been insured at and from *London*, to the *West Indies*, with leave to go to the place of rendezvous to join convoy, and warranted to sail from thence with convoy for the voyage; and in the last of them, in which the facts are most fully stated, it appeared that the ship arrived at *Spithead* about *nine* o'clock in the morning of the 15th *November* 1795; that she came round under

under the care of the first mate, the captain himself being on shore at *Portsmouth*; that on the preceding day (the 14th) sailing instructions were delivered at *Portsmouth* to all such ships, as applied regularly for them; and that the captain of the *Golden Grove*, previous to her arrival, made enquiry concerning sailing instructions, but found that they could not be obtained until the ship was actually in sight; that on the 15th of *November*, by day-light, admiral Sir *H. C. Christian*, the commander of the convoy, got under weigh, but had not entirely quitted the roadstead until about *four* o'clock in the evening: and when he got under sail, he left the *Trident* frigate to bring up such vessels as did not weigh anchor with him; that about *one* o'clock of the same day the captain of the *Golden Grove* repaired on board, and got under weigh, at which time the *Trident* had also got under weigh, and both the admiral's ship and the *Trident* had then proceeded so far, that it was clear the *Golden Grove* could not overtake the former soon enough for the captain to go on board that night, and it was even doubtful whether he could overtake the latter. That on the next day between *ten* and *twelve* o'clock in the forenoon, the captain of the *Golden Grove*, being only a quarter of a mile from the admiral's ship, went on board her, and obtained sailing instructions: that soon after the *Golden Grove* was lost, having been from the time of her departure to that of the loss under the protection of the convoy. Upon this state of facts, it was held, that the warranty was not complied with; for either the ship had not arrived time enough to obtain sailing instructions, or, if she had arrived time enough, her captain had not used the necessray endeavours to obtain them before she sailed.

If the ship do not quit her moorings until a few hours after the convoy, and in consequence of the occurrence of a calm and heavy sea is prevented from joining the convoy, it will not be an excuse for the master to show that he made every practicable exertion to come up with the convoy, and would have done so without difficulty if the wind had

continued as it was at the time when he left his moorings *(t)*.

On the other hand, if the master do all in his power to obtain sailing instructions, but is prevented from obtaining them by the badness of the weather *(u)*; or if they are refused by the commander of the convoy *(x)*; the warranty is complied with.

So, where by the terms of a policy of insurance on a ship at and from *Portneuf* to *London*, a part of the premium was to be returned, if the ship sailed with convoy on or before the 31st *October*; and it appeared that vessels sailing from *Portneuf* must clear at *Quebec*, and that the ship arrived at *Quebec* on the 28th of *October*, and obtained her clearances on the 29th, but could not procure a pilot to carry her down the river *St. Lawrence* till the 30th, on which day she joined the convoy some leagues below *Quebec*, but within the limits of that port, and cleared the port with the convoy on the 31st; it was held that the insurers were entitled to a return of premium, although the convoy had left *Quebec* on the 28th, having laid to for vessels that had not been able to join; the master who had gone from *Portneuf* to *Quebec* by land, had received his sailing instructions on the 27th of the month *(y)*. And where the master, in consequence of waiting for particular goods, did not leave his moorings until after the convoy, and was not able to join, having done all he could for that purpose, he was held not liable to an action at the suit of the owner of those goods *(z)*.

6. *b.* The necessity of sailing under convoy does not at all times depend merely upon a special undertaking or warranty for that purpose: during war it has been thought expedient by the Legislature of different states, to compel merchant

(t) Sanderson & others, v. *Busher* 4 Campbell, 54 in note.

(u) Victorin v. *Cleeve*, 2 Stra. 1250. The cause was tried before Chief Justice *Lee* at Guildhall.

(x) Veedon v. *Wilmot*, by Chief Justice *Lee* at Guildhall. Park, ch. 18. p. 444. *notis*.

(y) Ridsdale & others v. *Shedden*. 4 Campbell, 107.

(z) Magelhoens v. *Busher*, 4 Campbell, 54.

merchant vessels, in many cases, to place themselves under this protection as a measure of public policy, to prevent the enemy from enriching himself by their capture *(a)*. This was done by the Legislature of this country during the late wars *(b)*. And it might be considered as a general rule, liable to some exceptions allowed by statute, that a private merchant vessel should not sail on a foreign voyage without convoy, unless previously licensed so to do. For it was in the first place enacted in general terms, that it should not be lawful for any ship belonging to his Majesty's subjects (except as therein provided,) to depart from any port or place whatever, unless under such convoy as might be appointed for that purpose *(c)*. And the master was required to use his utmost endeavours to continue with the convoy during the whole voyage, or such part thereof as it should be directed to accompany his ship, and not to separate therefrom without leave of the commander, under very heavy pecuniary penalties *(d)*. And in case any ship should depart without convoy, contrary to the act, or wilfully separate therefrom, all insurances on the ship, cargo, or freight, belonging to the master, or to any other person who should have directed or been *privy* to such departure or separation, were made null and void *(e)*. And the officers

(a) A very full account of the regulations made at different times in *France*, on the subject of convoy, is given in *Valin*'s Commentary on the *French Ordinance*, tom. i. p. 691. by which it appears that at particular periods merchant ships have been absolutely forbidden to sail without convoy, under very severe penalties on the master and owners: and that, whenever convoy was required, the master was to bring his ship to the rendezvous, and receive sailing instructions *(ordres pour la route)* from the commandant, and obey his orders, and not separate from him. The Ordinance of *Hamburgh*, of the year 1731, tit. 4. art. 4. requires the master to receive a letter of instructions from the commander of the convoy, 2 *Magens*, 214.

(b) 38 *Geo.* 3. *c.* 76. & 43 *Geo.* 3. *c.* 57.

(c) 43 *Geo.* 3. *c.* 57. *s.* 1.

(d) Id. *s.* 2 & 3.

(e) Id. *s.* 4. A person who put goods on a ship, advertized as a running ship, which was captured on her voyage, was held to have lost the benefit of his insurance, it being held that he was privy to the ship's departure without convoy, and that to be *privy* was sufficient for this purpose, without being instrumental. *Wainhouse* v. *Cowie*, 4 Taunton, 178.

officers of the customs in *Great Britain* and *Ireland* were required not to allow any ship, which ought to sail with convoy, to clear outwards from any place in the *United Kingdom* to *foreign parts*, until the master should have given bond with one surety, with condition that the ship should not depart without convoy, contrary to the directions of the act, nor afterwards desert or wilfully separate therefrom *(f)*.

6. *c.* The constructions put upon an undertaking to sail with convoy, were in general found to be the true construction of the Acts of Parliament *(g)*. As similar statutes may be expected to pass whenever this country shall again unhappily be engaged in war, it has been thought right to notice here the decisions that took place on the former acts.

The ship *Maximilian*, bound from *London* to *Quebec*, arrived at *Portsmouth* a few hours after the *Quebec* convoy had sailed from thence for *Falmouth*, under orders to lie to, and call for ships off that port. The ship remained at *Portsmouth* for sixteen days, and then sailed with a *Mediterranean* convoy, that would protect her as far as the *Azores*, and was never heard of afterwards. In an action on a policy of insurance effected by the owner, who was privy to this sailing, it became a question, whether this was a sailing under convoy within the meaning of the act; and the Court held that it was not *(h)*. It was contended, that the *Mediterranean* convoy was a sufficient convoy to satisfy the act; or, if it were not, then that the ship might be presumed to have sailed in pursuit of the *Quebec* convoy, which it was argued she might lawfully do. But the Chief Justice *(i)* said, "on the whole purview of the act, it appears "that the sailing with convoy, which it requires, must be "a sailing with convoy for the voyage, or for so long a part "thereof

(f) 43 *Geo.* 3. *c.* 57. *s.* 5.
(g) By *Lawrence* J. 1 Taunton, 253.
(h) *Cohen* v. *Hinckley*, 1 Taunton, 249.
(i) Sir James *Mansfield*.

" thereof as convoy is appointed to go." " The master " sailed from *Portsmouth* to *Falmouth* without a convoy, " bound for *Quebec (k)*. It is argued that he may sail " from port to port without convoy; but the act does not " say that, unless the ship *was bound* from port to port: the " exception in the sixth section is for vessels *bound* from " port to port. The next argument used is, that the cap- " tain may legally endeavour to overtake the convoy; but " if he may try at all, why may he not continue to try, till " the convoy is arrived within the last ten miles, or even " the last mile of the voyage. Such a construction would " wholly defeat the purposes of the act: this then is a " sailing contrary to the act, and avoids the policy." Mr. Justice *Heath* observed there was no evidence of any sailing instructions having been given to the ship *(l)*. Mr. Justice *Chambre* observed, that though the act was to many purposes penal, yet it was to certain purposes a remedial act, directed to a great object of public policy, and the Court could not do it away on account of the hardship of the case.

6. *d.* The ship *Providence* being about to sail from *London* to *Madeira*, and being represented to be armed with six carriage guns, and manned with twelve men and boys, a licence was obtained for her sailing without convoy, *provided she should be armed and manned in the manner before mentioned.* She had her complement on board in the port of *London*, but five men were discharged; and on the 5th of *October* the ship cleared out for *Madeira*; and on the 11th of *February* she sailed from the *Downs* for *Portsmouth*, where, if any where, she would have found and joined convoy for *Madeira*. On the 13th of *February* she was captured off *Shoreham*, having only seven men on board. *No bond*

(k) And also without a convoy appointed for the *Quebec* ships, which might have been sufficient. See *D'Eguino* v. *Bewick*, ante, page 229.

(l) See *Webb* v. *Thomson*, and *Anderson* v. *Pitcher & Wife*, ante, page 229.

bond was given upon the ship's clearing out. At that time the owners had not determined whether or no they should avail themselves of their licence: if upon the ship's arrival at *Portsmouth* a convoy was found ready to sail, it was intended that the ship should be placed under its protection: if such convoy should not be found, it was intended to complete the crew to the number required by the licence, and to sail under the licence. The legality of this transaction was questioned in an action upon a policy of insurance; and the Court held it to be illegal. The licence could not legalize the ship's departure and proceedings, because its condition was not complied with; and although the ship might lawfully have sailed to *Portsmouth* as the place of rendezvous, if it had been intended that she should sail with convoy, yet in that case a bond was necessary, and none had been given, so that in effect this was a departure without licence, and without convoy *(m)*:

6. *e.* The ship *Ocean* was chartered for a voyage from *Hull* to *Palermo, Messina,* or *Malta,* and was destined accordingly. A licence was obtained for her sailing without convoy from *Hull* to *Gibraltar,* in which she was described as bound on a voyage to *Gibraltar*; she did not in fact take in any goods for *Gibraltar,* but she obtained clearances for *Gibraltar, Malta,* and *Messina.* Written instructions were given to the master to proceed to *Spithead,* and there to make enquiries about convoy, and if he should find a convoy appointed for the *Mediterranean* on the point of sailing, to take advantage of it; but not to receive instructions until it should be actually under weigh, that he might be at liberty to pursue his voyage singly, should the convoy not sail the moment the wind should be fair: in that case he was to make his way direct to *Palermo,* without touching either at *Gibraltar* or any other port. If, however, in passing *Gibraltar,* he should be ordered into the Bay by any of the cruizers, in order to join convoy bound upwards, he

(m) Hinckley v. *Walton,* 3 Taunton, 131.

he must comply; but not otherwise; as his great object must be to get to *Palermo* as soon as possible. The ship sailed without convoy, and arrived in the *Gut of Gibraltar*, and the master was obliged by stress of weather to put into *Gibraltar*, where he remained ten days, and enquired for convoy upwards; but finding no convoy, and there being no person authorized to appoint convoys or to grant licences, he sailed again for *Palermo*, and was captured on the way thither. The course of navigation to *Palermo* and *Gibraltar* is the same as far as the *Gut of Gibraltar*. Convoys for *Sicily* and other places in the *Mediterranean* frequently sailed from *England*. In an action on a policy of insurance the legality of this voyage also was questioned; and it was contended that the voyage was legal, because there was a licence to proceed to *Gibraltar* without convoy, and the further prosecution of the voyage from that place was within the exceptions of the statute; but the Court held the voyage to be illegal, the ship not having in fact sailed for *Gibraltar*, as her licence imported *(n)*. It is obvious that the parties interested in this voyage, and also in that of the ship *Providence*, were endeavouring to evade the law, and they met with the fate that usually awaits attempts of that nature: they found the law too strong for them.

The *Triumph* sailed with convoy from *Cork*, in 1811, returned to that port with the convoy, sailed with it again, and putting back in distress the convoy proceeded without her. Being repaired, she sailed ultimately on the voyage without convoy, or having obtained a licence to sail without. Under these circumstances the ship was held to have literally complied with the provision of the statute, and when leaving the port of *Cork*, for the third time, to have lawfully sailed on her voyage, without waiting for the next convoy

(*n*) *Ingram & others* v. *Agnew*, 15 East, 517. See also, *Wainhouse* v. *Cowie*, 4 Taunton, 178, and *Darby* v. *Newton*, 6 Taunton, 544.

convoy from that port, or joining convoy from any other port *(o)*.

The ship *Sir Sydney Smith*, bound from *London* to *Berbice*, sailed with a fleet for the *West Indies*, under convoy, and arrived therewith off *Madeira*, on Saturday the 17th *October*. The master was to land goods at *Madeira*, and take some wine on board there, he began to land the goods as soon as he arrived, but not being allowed to work on the Sunday, he had not got the wine on board till the Monday at noon, the convoying ship with the greatest part of the fleet sailed away on the Sunday, and was too far off to be overtaken. Some other ships were left behind at *Madeira*, and all agreed to sail together for mutual protection. The *Sir Sidney Smith* however was afterwards separated from them and captured. An owner of some goods insured was on board during the voyage, and afterwards brought an action on his policy. The cause was tried before Lord *Ellenborough*, who expressed himself to be clearly of opinion that the underwriters were discharged on the ground of deviation, but said he was inclined to think this was not a wilful desertion of the convoy within the meaning of the act, as the master appeared to have acted *bonâ fide*, and not to have been aware of the precise time when the convoy sailed from *Madeira (p)*.

But a merchant who having covenanted to furnish a full cargo in the *West Indies*, to a ship on a voyage from *Liverpool* to the *West Indies* and back, furnished a partial cargo only, was held liable to an action on his covenant, although the ship sailed from *Liverpool* without convoy, and without being manned in the manner specified in a licence that had been obtained for sailing without convoy, it not appearing that at the time of the contract of affreightment, the parties contemplated a disobedience of the Act of Parliament *(q)*.

(o) *Laing* v. *Glover*, 5 Taunt. 49.
(p) *Williams* v. *Shee*, 3 Camp. 469.
(q) *Wilson* v. *Foderingham*, 1 M. & S. 468.

7. THIRDLY, as to the Course of the Voyage.

Having commenced his voyage, the master must proceed to the place of destination without delay, and without stopping at any intermediate port, or deviating from the straight and shortest course, unless such stopping or deviation be necessary to repair the ship from the effects of accident or tempest, or to avoid enemies or pirates, by whom he has good reason to suspect that he shall be attacked, if he proceeds in the ordinary track, and whom he has good reason to hope that he may escape by delay or deviation; or unless the ship sail to the places resorted to in long voyages for a supply of water or provisions by common and established usage *(r)*. If the ship is captured in consequence of deviation, the merchant is entitled to recover from the owner the prime cost of his goods with the shipping charges, but no more, without direct proof that the goods at the time of the loss were enhanced in value beyond the amount before mentioned, although the merchant may have effected a policy of insurance thereon *(s)*. And if the ship has the misfortune to meet with enemies or pirates, the master must perform the part of a valiant man, and make the best resistance which the comparative strength of his ship and crew will allow *(t)*.

By the treatise called the *Guidon*, it is declared, that if the master, by connivance with robbers, or by his entreaties, obtain

(r) Roccus de assec. not. 52. See *Park* on Insurance, chap. 17. of Deviation. *French* Ordinance, liv. 3. tit. 3. *Du fret.* art. 10. The text was intended to apply to the case of a ship destined to one place only. If the ship be destined to several places, the master should sail to them in the usual or designated order. I apprehend this doctrine is not contrary to the decision of the Court of Error in the case of *Max* v. *Roberts*, 12 East, 89. That case was decided upon the form of the declaration, which averred only that the ship was bound from L. to W. and as this averment was not inconsistent with the fact of her being bound to other intermediate places, it was insufficient to found the subsequent allegation, that it was the duty of the owners to cause the ship to proceed from L. to W. without any unnecessary deviation from the course of the said voyage.

(s) Parker & others v. *James & another*, 4 Campbell, 112.

(t) Ordinance of the *Hanse-Towns*, art. 35, 36, 37. *Roccus*, not. 70. *Ante*, part 2. ch. 4. sect. 10.

obtain from them any part of the cargo by way of payment of his freight, he shall restore such part to the merchant, receiving the freight due in respect of it. And if the robbers pay him the freight of his ship, he shall give an account of the money paid, and the money shall be distributed by way of general average between the goods stolen and the freight of the ship *(u)*. I have already mentioned the provisions of the *English* legislature on this subject *(x)*.

If the ship be driven into a port out of the course of the voyage by tempest, or the master sail thither for any of the before-mentioned reasons, he must wait no longer than necessity requires, but sail again without delay; and for that purpose supply his ship with the requisite necessaries or repairs as expeditiously as he can.

8. If by reason of the damage done to the ship, or through want of necessary materials, she cannot be repaired at all, or not without very great loss of time, the master is *at liberty* to procure another ship to transport the cargo to the place of destination *(y)*. But if his own ship can be repaired, he is not *bound* to send the cargo by another, but may detain it till the repairs are made, and even hypothecate it for the expence of them: that is, supposing it not to be of a perishable nature; if it be of such a nature, and there be not time or opportunity to consult the merchant, he ought either to tranship or sell it, according as the one or the other will be most beneficial to the merchant *(z)*. So if the ship has been wrecked, and the cargo saved. And if on the high seas, the ship be in imminent

(u) *Guidon*, ch. 6. art. 2. p. 229.

(x) *Ante*, part. 2. ch. 4. sect. 10. & 11.

(y) Laws of *Oleron*, art. 4. and *Cleirac* thereon. *French Ordinance*, liv. 3. tit. 3. *Fret.* art. 11. and *Valin* thereon. *Molloy*, book 2. chap. 4. sect. 5. Ordin. of *Antwerp*, 2 *Magens*, p. 14. art. 3. Ordin. of *Rotterdam*, 2 *Magens*, p. 104. art. 147, 148. *See* also the judgment delivered by Lord *Mansfield* in the case of *Luke* v. *Lyde*, 2 Burr. 889.

(z) See the judgment pronounced by Sir *W. Scott*, in the case of the GRATITUDINE, *Mazzola*, 3 Rob. A. R. p. 240. cited ante, part 2. ch. 3. sect. 29.

minent danger of sinking, and another ship apparently of *sufficient ability* be passing by, the master may remove the cargo into such ship, and although his own ship happen to outlive the storm, and the other perish with the cargo, he will not be answerable for the loss.

8. *b.* The disposal however of the cargo by the master is a matter that requires the utmost caution on his part. He should always bear in mind that *it is his duty to convey it to the place of destination.* This is the purpose for which he has been intrusted with it, and this purpose he is bound to accomplish by every reasonable and practicable method. Every act that is not properly and strictly in furtherance of this duty, is an act, for which both he and his owners may be made responsible; and the law of *England* does not recognize the authority of any tribunal, or officer, acting upon *his* suggestion or at *his* instance; but will scrutinize *their* acts as much as his own *(a)*.

The hypothecation of the cargo is allowed by the marine law, and by the law of *England* also; but it is allowed in those cases only in which it is made in furtherance of this purpose. The sale of a part has been allowed: but it was allowed in a case, in which the hypothecation of the whole would have been lawful, and because it was considered as a matter equivalent to such hypothecation. Hypothecation imports a pledge without immediate change of possession *(b)*, it gives a right to the party, who makes advances upon the faith of it, to have the possession, if his advances are not repaid at the stipulated time, but it leaves to the proprietor of the things that may be hypothecated, the power of making such repayment, and thereby freeing

(a) See *Hunter* v. *Prinsep & others*, 10 East, 378. post ch. 7. of this part, sect. 17. *b.* *Van Omeron* v. *Dowick & others*, 2 Camp. 42. *Joseph & others* v. *Knox*, 3 Campbell, 320. See also part 1. ch. 1. sect. 2. & 3. ante, page 1—11, and the several cases of *Reid* v. *Darby*. The Fanny & Elmira. *Hayman & others*, v. *Moulton & others*, and *Andrews* v. *Glover* there cited.

(b) Proprie pignus dicimus, quod ad creditorem transit; *hypothecam*, cum non transit, nec possessio ad creditorem. *Dig.* 13. 7. 9. 2.

freeing them from the obligation. It is therefore (as hath been before observed *(c)*,) contrary to the nature of this proceeding, and consequently contrary to the duty, and beyond the power, of the master to engage that the lender shall at all events have the goods delivered at their place of destination to him or his agents, to be there sold and disposed of by him or them, without reserving the right of redemption to the merchant; and such an engagement will not be obligatory upon the merchant, but he will still have the right to take his goods upon payment of the money, for which they may have been engaged *(d)*.

8. *c.* It is obvious that this purpose, *viz.* the conveyance of the goods to the place of destination, cannot possibly be effected by a sale of the whole of them, and therefore, according to the principles before mentioned, the master cannot in his character of master, have authority to make such a sale; nor does the law superadd such authority to his character *(e)*. What then is the master to do, if by any disaster happening in the course of his voyage, he is unable to carry the goods to the place of destination, or to deliver them there? To this, as a general question, I apprehend no answer can be given. Every case must depend upon its own peculiar circumstances. The conduct proper to be adopted with respect to perishable goods, will be improper with respect to a cargo not perishable: one thing may be fit to be done with fish or fruit, and another with timber or iron: one method may be proper in distant regions, another in the vicinity of the merchant: one in a frequented navigation, another on unfrequented shores. The wreck of the ship is not necessarily followed by an impossibility of sending forward the goods; and does not of itself make their sale a measure of necessity or expedience: much less can the loss of the season, or of the proper course of the voyage, have this effect (*e*). An unexpected interdiction

(*c*) *Ante*, part 2. ch. 3. sect. 23. p. 122.

(*d*) *Johnson* v. *Greaves*, 2 Taunton, 344.

(*e*) *Van Omeron* v. *Dowick & others*, 2 Camp. 42.

interdiction of commerce, or a sudden war, may defeat the adventure, and oblige the ship to stop in her course; but neither of these events doth of itself alone make it necessary to sell the cargo at the place to which it may be proper for the ship to resort. In these and many other cases, the master may be discharged of his obligation to deliver the cargo at the place of destination, but it does not therefore follow that he is authorized to sell it, or ought to do so. What then is he to do? In general, it may be said he is to do that which a wise and prudent man will think most conducive to the benefit of all concerned *(f)*. In so doing he may expect to be safe, because the merchant will not have reason to be dissatisfied; but what this thing will be, no general rules can teach *(g)*. Some regard may be allowed to the interest of the ship and of its owners, but the interest of the cargo must not be sacrificed to it. Transhipment, for the place of destination, if it be practicable, is the first object, because that is in furtherance of the original purpose: if that be impracticable, return, or a safe deposit *(h)* may be expedient. The merchant should be consulted, if possible *(i)*. A sale is the last thing that the master should think of, because it can only be justified by that necessity, which supersedes all human laws. If he sell without necessity, his owners as

(f) See the judgement of the Court of *Common Pleas* delivered by Ch. J. *Mansfield* in *Christy* v. *Row*, 1 Taunton, 313. The court appear to have thought that a master bringing back goods under such circumstances, might be entitled to a compensation from the proprietor of the goods, although they held he could not recover any thing against a charterer of his ship, who was not the proprietor of the goods; the service not being for his benefit.

(g) I have not found any general rule or principle laid down on this subject in any of the foreign Ordinances or authors. The *French* Ordinance. Tit. *du Fret.* art. 6. is as follows:—"S'il arrive interdic-" tion de commerce avec le pays, " pour le quel le vaisseau est en " route, *et qu'il soit oblige* de revenir " avec son chargement, il ne sera " du au maitre que le fret de l'aller, " *quand même le navire auroit été* " *affrété allant et venant.*" And Code de Commerce. Art. 299.

(h) See an instance of deposit, which seems not to have been questioned, in *Liddard* v. *Lopes & another*, 10 East, 526, post, chap. 7. sect. 17. *d.*

(i) See *Wilson* v. *Millar & others*, 2 Starkie, 1.

as well as himself, will be answerable to the merchant *(k)*, and they will be equally answerable if he places the goods at the disposal of a Vice Admiralty court, in a British colony, and they are sold under an order of the court, such a court having no authority to order a sale *(l)*. And the persons who buy under such circumstances, will not acquire a title as against the merchant, but must answer to him for the value of the goods *(m)*.

9. Moreover, the master must during the voyage take all possible care of the cargo *(n)*. If it require to be aired or ventilated, as fruit and some other things do, he must take the usual and proper methods for this purpose *(o)*; and although he is not responsible for injury done to it in consequence of a leak in the ship occasioned by tempest or other accident; yet where rats occasioned a leak in the vessel, whereby the goods were spoiled, the master was held responsible for the damage, notwithstanding the crew afterwards, by pumping, &c. did all they could to preserve the cargo from injury *(p)*. And this determination agrees with the rule laid down by *Roccus*, who says, if mice eat the cargo, and thereby occasion no small injury to the merchant, the master must make good the loss, because he is guilty of a fault. Yet if he had cats on board his ship, he shall be excused *(q)*. This rule and the exception to it, although bearing somewhat of a ludicrous air, furnish a good illustration of the general principle, by which the master and owners are held responsible for every injury, that might have been prevented by human foresight or care. In conformity to which principle, they are responsible for goods

(k) Freeman & another v. *E. I. Comp.* 5 B. & A. 617. and *Wilson* v. *Dickson*, 2. B. & A. 2.

(l) Cannan & others v. *Meaburn & others*, 1 Bing. 243. and 8 B. Moore, 127.

(m) Morris & another v. *Robinson*, 3 B. & C. 196.

(n) Emerigon, tom. i. p. 377.

(o) See *Davidson* v. *Gwynne*, 12 East, 381.

(p) Dale v. *Hall*, 1 Wils. 281.

(q) Roccus, not. 58. and see *Jones* on Bailments, p. 105. This rule is laid down in the *Consolato del mare*, cap. 65 & 66. and adopted by all foreign writers on this subject. *Emerigon*, tom. i. p. 377, 378.

goods stolen or embezzled on board the ship by the crew or other persons *(r)*, or lost or injured in consequence of the ship sailing in fair weather against a rock or shallow known to expert mariners *(s)*.

So where in a voyage from *Hull* to *Gainsborough* a vessel was sunk in the river *Trent* by striking against the anchor of another, which anchor lay under water, and without a buoy, whereby some goods in the former were injured, the owners thereof were held responsible for the injury *(t)*.

10. If the master, being compelled to take refuge in a foreign port during the course of his voyage, has occasion for money for the repairs of the ship, or other expence necessary to enable him to prosecute and complete the voyage, and cannot otherwise obtain it, he may, as hath been before observed, either hypothecate the whole cargo or sell a part of it for this purpose *(u)*; in the latter case, if the ship reach the place of destination, the merchant will be entitled to receive the clear value, for which the goods might have been sold at that place *(x)*; or he may take the sum for which the goods actually sold, and if he is content to do so, he may deduct that sum from the money payable for the freight of his other goods; and this, although the owner may have assigned the freight to a third person, and the goods were sold without an urgent necessity *(y)*. If the ship afterwards perish, and reach not the destined port, the Ordinance of *Wisbuy* expressly declares that the money raised by this sale shall be paid to the merchant by the master

(r) Roccus, not. 40. *Wellwood*, tit. 9. p. 30.

(s) Emerigon, tom. i. p. 373. *Roccus*, not. 55.

(t) Proprietors of the Trent and Mersey Navigation v. *Wood*, East, Ter. 1785. in K. B.

(u) The GRATITUDINE, *Mazzola*, 3 Rob. A. R. 240. cited ante, part 2. ch. 3. sect. 33. p. 129.

(x) Alers & others v. *Tobin & others* at Guildhall, *October* 30, 1802. Before Lord *Ellenborough*, Ch. J. and a special jury. Laws of *Oleron*, art. 22. Ordin. of *Wisbuy*, art. 35. 45, 69. *French* Ordinance, liv. 2. tit. 1. *du Capitaine*, art. 19. liv. 3. tit. 3. *Fret.* art. 14. and *Valin* thereon. *Pothier*, Ch. Partie, num. 33, 34. See also *Molloy*, book 2. chap. 2. sect. 14. And Ordin. of *Rotterdam*, art. 133, 134, 135. 2 *Magens*, 102, 103.

(y) Campbell v. *Thompson*, 1 Starkie, 490.

master *(z)*; and *Cleirac*, *Kurick*, *Valin*, and *Pothier*, agree in opinion that the money is in such a case due not only from the master, but also from the owners, because it was expended for a purpose, of which they were at all events liable to sustain the charge. But none of the other Ordinances contain such a provision; and *Emerigon* contends on the authority of the *Consolato del mare*, and of the Ordinances of *Oleron* and *Antwerp*, that the money is only payable in case of the safe arrival of the ship; which was the opinion also of several persons, whom *Pothier* consulted. And this doctrine seems the most reasonable, as the merchant is not thereby placed in a worse situation than if his goods had not been sold, but had remained on board the ship. I cannot find that the question ever arose in this country. By the Code de Commerce, the master is to account for the price received, deducting the freight: Art. 298.

11. LASTLY,—As to the Completion of the Voyage.

When the ship has arrived at the place of her destination, the master must take care that she be safely moored or anchored *(a)*, and report his ship and crew, and deliver his manifest and other papers to the proper officers, according to the law and custom of the place *(b)*, and without delay deliver the cargo to the merchant or his consignees *(c)*, upon production of the bills of lading and payment of the freight and other charges due in respect of it; and he has no right to detain the goods for wharfage, if the consignee tenders the freight, and requires them to be delivered over the ship's side *(d)*; and if by the terms of the charter-party, a particular number of days is stipulated for the delivery,

(z) Art. 68. See *Emerigon*, tom. 2. p. 445, where the several authorities here referred to are cited.

(a) Ord. of *Wisbuy*, art. 36.

(b) 6 *Geo.* 4. *c.* 107, *s.* 15. 39.

(c) This is true as a general rule; the exceptions to the rule, arising out of the power of the consignor to countermand the delivery, and stop the goods, before they come to the possession of the consignee, will be treated of distinctly in the *ninth* chapter of this part.

(d) *Bishop & others* v. *Ware*, 3 Campbell, 360.

delivery, either generally or by way of demurrage, he must wait the appointed time for that purpose: These charges are in ordinary cases primage, and the usual petty average, as expressed in the bill of lading; in case of any loss, that became the subject of general average, the Civil Law imposed upon the master the duty of adjusting and settling such average, and obtaining from the owners of the cargo saved, the sums to be paid as a contribution to the loss, and allowed him to detain the cargo for that purpose *(e)*. This power of detaining the cargo is also given by the laws of *Oleron (f)*, and by the *French* Ordinance *(g)*. It is said to be the practice in this country, in the case of a general ship, for the master to take security from the merchants, before he delivers the goods, for payment of their shares of this contribution when the average shall be adjusted *(h)*.

If goods are conveyed in pursuance of a charter-party, the right of detention for the freight may depend upon the terms of the particular contract *(i)*; where there is no special contract, as in the case of a general ship, the master is not bound absolutely to part with the possession of any part of his cargo, until the freight and other charges, due in respect of such part, are paid. *Valin* informs us, that the entire contents of a single bill of lading, are to be considered as one part, although consisting of very different articles, but that the contents of one bill of lading are not bound to the payment due for the contents of another bill of lading, although consigned to the same person *(k)*. In this country however it has been held, that the master may detain any part of the merchandize for the freight of all that is consigned to the same person *(l)*; which seems to be

(e) *Dig.* 14. 2. 2.
(f) Art. 9.
(g) Liv. 3. tit. 8. *du jet.* art. 21.
(h) So deposed by a gentleman very conversant with this business, in the cause of *Myer & others* v. *Vander Deyl*, Guildhall Sit. p. Mic. Ter. 1803, before Lord *Ellenborough*, C. J.
(i) See before, page 170.
(k) *Valin*, on the *French Ordinance*, tom. 1. p. 668.
(l) *Soldergreen* v. *Flight & another*, Guildhall, Sit. p. T. T. 1796, before Lord *Kenyon*, C. J. quoted 6 East, 622.

be a more reasonable and convenient rule. The master however cannot detain the goods on board the ship, until these payments are made, as the merchant would then have no opportunity of examining their condition. By the Ordinance of *Wisbuy (m)*, and also by the *French* Ordinance *(n)*, the master may seize and detain the goods in the lighters or barges, which are to transport them to the quay, and by the former he may detain the lighters by the ship's side. *Cleirac (o)*, in his commentary on the laws of *Oleron*, says that the same power is given by the Ordinance of *Philip the Second*, and by the *Consolato del mare*, and that the latter allows him to detain goods equal in value to four times the amount of the freight. The Ordinance of *Rotterdam* allows the master to detain the goods for his freight, but requires him to unload and take care of them, that they may not be diminished or spoiled *(p)*. In *England* the practice is to send such goods as are not required to be landed at any particular dock, to a public wharf, and order the wharfinger not to part with them, till the freight and other charges are paid, if the master is doubtful of the payment. And by the law of *England*, if the master once parts with the possession out of the hands of himself and his agents, he loses his lien or hold upon the goods, and cannot afterwards reclaim them *(q)*. If the master land his goods at any particular wharf or dock, in obedience to an Act of Parliament, he does not thereby part with his lien *(r)*. If goods are landed and sold by the officers of the customs, the

(m) Art. 57.
(n) Liv. 3. tit. 3. *fret.* art. 23.
(o) Art. 21. note 3. page 72.
(p) Art. 157, 158. 2 *Magens*, 106.
(q) By the *French Ordinance*, liv. 3. tit. 3. *Fret.* art. 24. The lien or privilege continues while the goods are on board the ship, in the lighters, or on the quay, and even for a fortnight after they have been delivered, provided they have not in the mean time passed into the hands of a third person. So, by the Code de Com. Art. 307.

(r) Wilson & others v. *Kymer & others*, 1 M. & S. 157. The goods in this case were landed under the *West India Dock* Act, 39 *Geo.* 3. c. 69, which does not expressly reserve the lien for freight, as is done by the *London Dock* Act, 45 *Geo.* 3. c. 58. *s.* 15.

the freight not having been paid, the produce of the sale is to be first applied to the payment of the freight *(s)*.

The baggage of a passenger may be detained for the passage money, which is to be considered as payable in respect of the person and his baggage, but the passenger himself cannot be detained, nor the clothes taken from his person *(t)*. The master has no right to detain goods actually brought for the payment of what is usually called dead freight, as I have before observed *(u)*.

12. The manner of delivering the goods and consequently the period, at which the responsibility of the master and owners will cease, depend upon the custom of particular particular places, and the usage of particular trades *(x)*. Thus a hoyman, who brings goods from an out-port into the port of *London*, is not discharged by landing them at the usual wharf, but is bound to take care and send them out by land to the place of consignment *(y)*. And if the consignee require to have the goods delivered to himself, and direct the master not to land them on a wharf at *London*, the master must obey the request; for the wharfinger has no legal right to insist upon the goods being landed at his wharf, although the vessel be moored against it *(z)*. But in the case of ships coming from a foreign country, delivery at a wharf in *London* discharges the master *(a)*. If the consignee send a lighter to fetch the goods, it seems the master of the ship is obliged by the custom of the river *Thames* to watch them in the lighter, until the lighter is fully laden; and he cannot discharge himself from this obligation by declaring to the lighterman that he has not hands to guard the lighter, unless the consignee consent to

(s) 6 *Geo.* 4. *c.* 107. *s.* 134.

(t) *Wolf* v. *Summers*, before *Lawrence*, J. at Guildhall, 2 Camp. 631.

(w) See before ch. 1. of this part, sect. 7. page 171.

(x) See *Valin* on the *French Ordinance*, tom. 1. p. 530.

(y) *Wardell* v. *Mourillyan*, 2. Espin. N. P. cases, 603.

(z) *Syeds* v. *Hay*, 4. Ter. Rep. K. B. 260.

(a) By *Buller*, J. Arguendo in the case of *Hyde* v. *Trent & Mersey Navig. Comp.* 5 Ter. Rep. K. B. 397.

to release him from the performance of it *(b)*: But it has been much contested whether the master is by the usage bound to take care of the lighter, after it is fully laden, until the time when it can be properly removed from the ship to the wharf; at a trial on this question, it was held that the master was not obliged to do this *(c)*. When ships arrive from *Turkey*, and are obliged to perform quarantine *(d)* before their entry into the port of *London*, it is usual for the consignee to send down persons at his own expence, to pack and take care of the goods; and therefore where a consignee had omitted to do so, and goods were damaged by being sent loose to shore; it was held that he had no right to call upon the master of the ship for a compensation *(e)*.

(b) Catley & another v. *Wintringham*, Peak's N. P. cases, 150.

(c) Robinson v. *Turpin & another*, Guildhall Sit. after T. T. 1805, before Lord *Ellenborough*, Ch. J. This was an action by the owner of the goods against the lighterman, and the plaintiff obtained a verdict. At a former trial before Sir *James Mansfield*, Ch. J. the plaintiff had been nonsuited.

(d) As to Quarantine, see *stat.* 45. *Geo.* 3. *c.* 10. *s.* 3. 6.

(e) Dunnage v. *Joliffe*, before Lord *Kenyon*, Ch. J. at Guildhall Sit. p. Mich. T. 1789.

CHAPTER THE FOURTH.

OF THE CAUSES WHICH EXCUSE THE MASTER AND OWNERS.

1. IT has been already intimated *(a)* that a carrier is in general excused for a non-performance of the contract on his part, occasioned by any event falling within the meaning of the expression *Act of God and the King's enemies.* The expression *Act of God* denotes natural accidents, such as lightning, earthquake, and tempest; and not accidents arising from the negligence of man *(b)*; for which it has been already shewn that the master and owners like other common carriers, are sometimes answerable, although no actual blame may be imputable to them; for in considering whether they, or other carriers, are chargeble for any particular loss, the question is, not whether the loss happened by reason of the negligence of the persons employed in the conveyance of the goods, but whether it was occasioned by any of those causes, which either according to the general rules of law, or the particular contract of the parties, afford an excuse for the non-performance of the contract.

Thus the master has been held answerable for a loss of the goods occasioned by a seizure of the ship by the officers of the revenue, for a supposed violation of the Revenue Laws, although in the result of the proceedings under the seizure it may appear that there was no cause for condemnation.

(a) In the preceding chapter, sect. 2.

In the preamble to the *Statute* 26. *Geo.* 3. c. 86, the cases, in which the master and owners are exempted from responsibility, are expressed to be *accidents by the King's enemies, the perils of the sea, or the act of God.*

(b) Trent & Mersey Navigation Company v. *Wood*, East. Term, 23 *Geo.* 3. in K. B. *Forward* v. *Pittard*, 1 Ter. Rep. K. B. 27.

tion *(c)*. So probably the master and owners would, by the common law, be answerable for a loss arising from the negligence or misconduct of a local pilot, to whom the direction of the ship was necessarily intrusted *(d)*, but this responsibility (in certain cases at least) is now taken away by an Act of Parliament *(e)*.

So in an action *(f)* brought against the master of a vessel navigating the rivers *Ouse* and *Humber* from *Selby* to *Hull*, by a person whose goods had been wet and spoiled; at the trial whereof it appeared in evidence, that at the entrance of

(c) *Gosling* v. *Higgins*, 1 Campbell, 451.

(d) See the opinion of the Ch. Justice in *Bowcher* v. *Noidstrom*, 1 Taunton, 568.

(e) *Stat.* 6 *Geo.* 4. *c.* 125. *s.* 55.

(f) *Smith* v. *Shepherd*. This cause was first tried at the summer assizes for Yorkshire, 1795, and the plaintiff non-suited; the Judge being of opinion that no case of negligence was proved. The non-suit was set aside by the Court of King's Bench, and a new trial granted, that the facts might be more fully inquired into. It was tried a *second* time at the Lent assizes following. The account in the text is of the evidence given at the *second* trial, which differed in some particulars from that given at the *first* trial. In Easter term following, a new trial was moved for, but a rule to shew cause refused.

Several ship-owners, being greatly alarmed at the decision of this cause, petitioned Parliament for an alteration of the law on this subject: and a bill passed the *House of Commons*, enacting, that no owner or master of any ships or vessels, employed *in the navigation of the high seas*, should be subject to answer for any loss or damage, which should happen to any goods on board by any accident whatever, unless the same should happen or arise "by "or through the robbery, embez- "zlement, secreting, or making "away with, or by or through the "actual default, of the said owner "or owners, master, mariners, or "other person or persons employed "in and on board of such ships "or vessels; any law, usage, or "custom to the contrary thereof "in anywise notwithstanding." And that no owner or master of any ship or vessel employed *in the navigation of the tideway of any river*, and not employed in the navigation of the high seas, should be subject to answer for any loss or damage which should "happen or arise at "or below any port or place in "such tideway, where ships or "vessels employed in the coasting "trade, do or shall load or dis- "charge by entry or sufferance;" to any goods on board, unless such loss or damage should happen or arise in the ways before-mentioned with respect to ships navigating the high seas.

But this Bill was rejected by the *House of Lords*.

This led to the alteration of the bill of lading mentioned before, part iii. chap. 2. sect. 3. and, I presume, also to the notice mentioned to have been given in the case of *Ellis* v. *Turner & another*, part ii. chap. 2. sect. 6. p. 96.

of the harbour at *Hull* there was a bank, on which vessels used to lie in safety, but of which a part had been swept away by a great flood some short time before the misfortune in question, so that it had become perfectly steep instead of shelving towards the river; that a few days after this flood a vessel sunk by getting on this bank, and her mast, which was carried away, was suffered to float in the river tied to some part of the vessel: and that the defendant upon sailing into the harbour struck against the mast, which, not giving way, forced the defendant's vessel towards the bank, where she struck, and would have remained safe, had the bank been in its former situation, but on the tide ebbing her stern sunk into the water, and the goods were spoiled: upon which the defendant tendered evidence to shew that there had been no actual negligence: Mr. Justice *Heath*, before whom the cause was tried, rejected the evidence; and he further ruled that the act of God, which could excuse the defendant, must be *immediate*; but this was too remote; and directed the jury to find their verdict for the plaintiff; and they accordingly did so. The case was afterwards submitted to the consideration of the Court of King's Bench, who approved of the direction given by the learned Judge at the trial, and the plaintiff succeeded in the cause. There does not appear to have existed in this case any bill of lading or other instrument of contract; and the question therefore depended upon general principles, and not upon the meaning of any particular words, or exception.

The only exception formerly made in the common bill of lading was of the *perils of the sea*, which words certainly denote the *natural* accidents peculiar to that element, and in more than one instance have been held to extend to an event not attributable to natural causes. The several words lately introduced into the exception of the bill of lading *(g)* have hitherto furnished matter for one judicial determination only, which has been already noticed. In the

(g) See ch. 2. of this part, sect. 3. p. 214.

the present chapter therefore, I shall first consider the meaning of this extensive phrase, *perils of the sea*, and then proceed to mention other excuses, which the wisdom of the Legislature has introduced in very late times.

2. In considering this subject, the first question that presents itself to the mind of an *English* Lawyer, is, how is the question of *peril of the sea* to be decided? The particular manner in which a loss happens, must always be a question of fact, but admitting it to have happened in a particular manner, is the Judge, before whom a cause is tried, to pronounce whether that manner be a peril of the sea, or are the Jury to declare it by their verdict? In general the construction of ambiguous expressions in written instruments is the proper province of the Judge; but in mercantile instruments it often happens that the Judge must have recourse to the usage of trade, and the practice among merchants, to obtain a proper knowledge of the meaning of the words. When the meaning of the words is ascertained, it will rarely happen that the Judge and jury can differ in the conclusion; and probably this question, although it might afford matter of speculation, will never become a subject of serious practical inquiry.

A very remarkable case to this purpose happened about the end of the reign of *Charles the First*. To an action of covenant on a charter-party, which contained an exception of the *perils of the sea*, the defendant pleaded that the ship was taken by hostile persons unknown, armed in a warlike manner; and thereupon the question whether such a capture were within the exception, was brought before the Court by a demurrer in the most strict technical form; the Court however took the opinion of several merchants by certificate in writing, and afterwards by examination in open Court, upon the meaning of the words of this exception as established by usage among them, and decided in conformity to such opinion *(h)*.

At

(h) Pickering v. *Barclay*, 2. Roll. Ab. 248. and Style, 132. The case was argued by *Twisden* for the plaintiff, and *Hale* for the defendant.

At the trial of a cause before Lord *Kenyon*, in an action upon the case brought by a merchant against the owner of a ship, for not safely conveying goods, where the whole matter was left open for discussion by a plea of the general issue, this question was proposed to be agitated by the counsel. His Lordship however, without hesitation, declared his opinion to be, that the question was purely a matter of fact for the consideration of the jury; upon the particular circumstances of the case the jury and his Lordship coincided, and therefore the case afforded no opportunity of a more solemn discussion of the question *(i)*.

These cases certainly furnish very strong authority to shew, that even if the decision of this question does strictly and properly belong to the Judge, yet his decision will be guided by usage and the course of practice among merchants, which are matters of evidence and of fact.

3. In the case of *Pickering* v. *Barclay*, which I have just before alluded to *(k)*, the ship had been overpowered and plundered on the high seas by pirates, and the question was, whether the owners were answerable for the goods; and it was determined in the manner before-mentioned, that they were not answerable, "because," says the reporter, "the taking by pirates was accounted a peril of the sea." The same question received a similar decision not long afterwards in another cause *(l)*. These determinations agree with the rule of the civil law *(m)*: And in the case cited in the preceding chapter *(n)*, in which the owners were held responsible for goods taken by robbery from the ship in the river *Thames* within the body of a county, Chief Justice *Hale* took notice of this doctrine, and said, "by the Civil Admiral law the owners are not responsible

(i) *Buller* v. *Fisher*, Sit. p. Mich. Ter. 40 *Geo.* 3, at Guildhall.

(k) *Pickering* v. *Barclay*, ante, page 254.

(l) *Barton* v. *Wolliford*, Comb. 56.

(m) *Dig.* 4. 9. 3. 1. Inde Labeo scribit, si quid naufragio aut per vim piratarum perierit, non esse iniquum exceptionem ei dari.

(n) *Morse* v. *Slue*, 1 Vent. 190, ante, ch. 3. of this part, sect. 3.

responsible for "a robbery by pirates at sea." This however is to be understood only in case the ship does not fall into the hands of pirates by any negligence or fault of the master *(o)*.

4. In a case, which came before the Court of King's Bench, a short time before the late alteration of the bill of lading, and which was an action brought to recover the value of goods, for which the master had signed a bill of lading containing an exception only of the *perils of the sea*, although made during the time of a war, and which goods were lost in consequence of the ship being designedly struck by the vessel of an enemy; it was doubted by the Court, whether a loss so occasioned, were within the meaning of this exception, and the cause never proceeded to a final judgment *(p)*. The express exception in this case afforded room to contend, that the exception of the act of the King's enemies, which arises out of general rules of law, was meant to be excluded in the particular instance.

5. In the other case just before mentioned *(q)*, the ship in which the goods were conveyed, was run down in daylight, and not in a tempest, by one of two other ships, that were sailing in an opposite direction to her, both of which kept to windward, as did also the defendant's ship, but it was matter of so much doubt, whether the master of the defendant's ship, ought to have understood the course which the others would pursue, and have borne to leeward to avoid them, that no blame was considered to be imputable to him for not having done so, nor was any fault attributable to the persons, who had the conduct of either of the other ships. This loss was therefore held to fall within the meaning of this exception, and to have happened by a peril of the sea.

It

(o) Emerigon, tom. 1. p. 532.

(p) Bever v. *Tomlinson*, East. T. 36 *Geo.* 3. The case came before the Court on a motion for a new trial; the Court directed a new trial in order that the facts might be put upon the record, but it never came on again.

(q) Buller v. *Fisher*, ante, p. 255.

It may be proper to point out the distinction between this case and the case of the vessel, that struck against the anchor of another, to which there was no buoy; which I have mentioned in the preceding chapter *(r)*. In this case there was no fault or negligence in the persons belonging to either vessel; in the other, both parties were held to have been guilty of negligence, the one in leaving his anchor without a buoy, the other in not avoiding it, as when he saw the vessel in the river, he must have known that there was an anchor near at hand; or if it be taken that negligence was imputable only to the master, who had left his anchor without a buoy, then he was answerable over to the master and owners of the vessel, whose cargo had been injured: and indeed the accident happened in the course of a navigation, to which the exception of the *perils of the sea* did not apply,

5. *b*. In a case upon a policy of insurance, wherein the loss happened by the circumstance of the master of a *British* ship mistaking the ship insured for an enemy, and under that mistake firing into her, whereby she was sunk, it was doubted whether the loss could properly be said to have happened by a peril of the sea, and the point was not decided, because the loss was held clearly to fall within some other of the words used in the policy, and the manner of the loss was expressly stated in one of the counts of the declaration *(s)*. In another case, on a policy of insurance, wherein it appeared that the master of the ship insured mistaking a *British* ship of war for an enemy, produced simulated papers, and concealed his *British* licence, in consequence of which his ship was taken in tow by the ship of war, and in order to keep up, was obliged to use an extraordinary press of sail, and during a gale of wind and a high sea shipped a quantity of water whereby the cargo was damaged; Lord *Ellenborough* held this to be a loss by perils of

(r) Sect. 9. p. 244.
(s) *Cullen* v. *Butler*, 1 Starkie, 138. and 5 M. & S. 461.

of the sea *(t)*. In another case arising also upon a policy of insurance, wherein the loss happened by collision without any neglect or fault on the part of the *Helena*, the ship insured, and was so specially alleged in the declaration, the underwriters were held answerable, and *Mansfield*, C. J. said, "I do not know how to make this out not to be a "peril of the sea, what drove the *Margaret* against the "*Helena*? the sea; what was the cause that the crew of "the other ship did not prevent her from running against "the *Helena*? their gross and culpable negligence; but "still the sea did the mischief *(u)*." In another case, wherein it appeared that a ship was hove down on a beach within the tide-way, for the purpose of repairing, and the tide having carried away the shoars by which she was supported, her side and some of her timbers were injured, the damage was considered as having happened on the land, and not to be a loss by perils of the sea *(x)*. But where a ship was moored in a harbour, having a hard uneven bottom, and being left by the tide at night, a noise was heard as of timber breaking, and on the reflux of the tide, there being a considerable swell in the harbour, she struck the ground hard several times, and in the morning several of her knees were found to be broken, this damage was held to be a loss by peril of the sea *(y)*.

6. But not every loss proceeding directly from natural causes, is to be considered as happening by a peril of the sea. If a ship perish in consequence of striking against a rock or shallow, the circumstances, under which the event takes place, must be ascertained in order to decide, whether it happen by a peril of the sea or by the fault of the master. If the situation of the rock or shallow is generally known, and the ship not forced upon it by adverse winds or tempest, the loss is to be imputed to the fault of the master.

On

(t) Hagedorn & another v. *Whitmore*, 1 Starkie, 157.

(u) Smith & others v. *Scott*, 4 Taunton, 126.

(x) Thompson v. *Whitmore*, 3 Taunton, 227.

(y) Fletcher v. *Inglis*, 2. B. & A. 315.

On the other hand, if a ship is forced upon such a rock or shallow, by adverse winds or tempest, or if the shallow was occasioned by a sudden and recent collection of sand in a place, where ships could before sail in safety; the loss is to be attributed to the act of God or the perils of the sea *(z)*. In the case mentioned in the beginning of this chapter *(a)* Lord *Kenyon* observed, that if an earthquake had removed the bank at the time of the accident, the master would have been excused.

7. If a vessel, reasonably sufficient for the voyage, be lost by a peril of the sea, the merchant cannot charge the owners by shewing that a stouter ship would have outlived the peril; this was decided in the case of a hoy driven by a sudden gust of wind against the pier of a bridge, through which it attempted to pass, and thereby sunk in consequence of a shock, that a stronger vessel might have sustained without sinking *(b)*.

8. From the preceding observations and authorities it will be obvious, that neither the master nor owners can be answerable for a loss happening to the cargo by *lightning*. Yet upon the principle, upon which the decisions are founded, they must be answerable for a loss by fire proceeding from any *other* cause, whether originally commencing in their own ship, or communicated to it from another. And in the case of an inland carrier *(c)*, this point has been solemnly decided, and the law remains unaltered *(d)*. But by a statute made in the very same year in which the point was first decided, it is enacted, "That "no

(z) *Roccus*, not. 55. *Strac. de nautis*, pars. 3. num. 32.

(a) *Smith* v. *Shephard*, ante, page 252.

(b) *Amies* v. *Stevens*, 1 Stra. 128. Bull. Nisi Pri. p. 69.

(c) *Forward* v. *Pittard*, 1 Ter. Rep. K. B. p. 27.

(d) *Hyde & another* v. *Trent & Mersey Nav. Comp.* 5 Ter. Rep. K. B. p. 389. But a *warehouseman* is not answerable for a loss by *fire*. *Garside* v. *Trent & Mersey Nav. Comp.* 4 Ter. Rep. K. B. 581. Nor is the hirer of goods answerable; per Lord *Kenyon*, Ch. J. Sit. at West. p. E. T. 1790. *Longman* v. *Galini*, in the case of musical instruments hired to be used at the Opera House, and destroyed by fire there.

" no owner or owners of any ship or vessel shall be subject " or liable to answer for, or make good, to any one or more " person or persons, any loss or damage, which may happen " to any goods or merchandize whatsoever, which from and " after the *first* day of *September* 1786, shall be shipped, " taken in, or put on board any such ship or vessel, by " reason or means of *any fire* happening to or on board the " said ship or vessel *(e)*."

In this clause the *master* is not mentioned; and therefore it may be doubtful whether his responsibility is in this case removed by the statute: but the insertion of the word *fire* in the modern bill of lading has certainly removed it.

9. By another section of the same statute *reciting*, " That " disputes may arise, whether the owners or masters of " ships are liable to answer or make good the value or " amount of any gold, silver, diamonds, watches, jewels, " or precious stones, which may be lost after the same have " been put on board their ships on freight, without the " shippers thereof declaring at the time the value of such " goods"—It is *enacted*, " That no *master*, owner, or owners, " of any ship or vessel shall be subject or liable to answer " for or make good, to any one or more person or persons, " any loss or damage, which may happen to any gold, sil- " ver, diamonds, watches, jewels, or precious stones, which " from and after the passing of this act shall be shipped, " taken in, or put on board any such ship or vessel, by rea- " son or means of any robbery, embezzlement, making away " with, or secreting thereof, unless the owner or shipper " thereof shall, at the time of shipping the same, insert in " his bill of lading, or otherwise declare in writing to the " master, owner, or owners, of such ship or vessel, the true " nature, quality, and value of such gold, silver, diamonds, " watches, jewels, or precious stones." *(f)*

10. By the late Act of Parliament passed for the more effectual regulation of pilotage, it is provided, that no owner

(e) 26 *Geo.* 3. c. 86. *sect.* 2. | *(f)* 26 *Geo.* 3. c. 86. *sect.* 3.

owner or master of any ship or vessel shall be answerable for any loss or damage, "for or by reason or means of any "neglect, default, incompetency, or incapacity of any li- "censed pilot acting in the charge of such ship or vessel, "under or in pursuance of any of the provisions of that "act, where and so long as such pilot shall be duly qualified "to have the charge of such ship, or where and so long as "no duly qualified pilot shall have offered to take charge "thereof (g)."

11. "*The Restraint of Princes and Rulers,*" commonly mentioned in charter-parties as an exception or excuse for the non-performance of the contract on the part of the master, is to be understood of an actual and not of an expected restraint, although the expectation may be reasonable and well grounded, and the master may act upon it with fair and honest intentions. This was decided in the following case. The *British* ship *Adelphi* was chartered for a voyage from *London* to *Petersburgh*, or as near thereto as she could safely get, there to load a complete cargo of hemp, and of iron for ballast, and proceed therewith to *Woolwich* and *London*, and there deliver the same on being paid freight at certain rates per ton (restraint of Princes and Rulers during the said voyage always excepted): thirty running days to be allowed the merchant for loading. Under this contract the ship sailed to *Cronstadt* (the port of *Petersburgh*) and there took in iron for ballast and a certain quantity of hemp, and the master was proceeding with all due diligence to load his full cargo of hemp, by screwing it down in the usual way, when, about the ninth day, a rumour was circulated of an embargo being about to be laid by the *Russian* government on all *British* vessels, and the person who was agent for the *British* factory at *Cronstadt*, and agent also to the house at *Petersburgh*, who were the agents to the merchant charterer of this ship, in consequence of instructions received from the *British* Consul-General

(g) 6 *Geo.* 4. *c.* 125. *s.* 55. see also part 2. *c.* 5. p. 158.

General at *Petersburgh*, desired the captains of such *British* vessels as were ready to proceed to sea, to do so as soon as possible, as he expected an embargo might take place immediately. In consequence of this the master gave orders to leave off screwing down hemp, and to fill the ship as fast as possible by hand, and the whole day was employed in this way, and the ship filled as far as could be done by hand. In the evening the ship sailed with something more than half the cargo that she could have carried, if the hemp had been screwed down: the merchant had a sufficient quantity of hemp for a full cargo lying by the ship's side in lighters: many other *British* vessels sailed the same evening, or the next morning, without full cargoes: some however remained, and afterwards completed their lading: and were not detained by the *Russian* government: no embargo was in fact imposed until six weeks after this time; the ship would have completed her loading within that period. The master sailed away without any communication with the defendant's agents at *Petersburgh*, who came to *Cronstadt*, as soon as they had notice of the circumstances, with intention to stop the ship, but arrived too late. The master acted *bonâ fide*, and as an honest man, and there was reasonable and well grounded apprehension for his acting as he did. The goods taken on board were brought to *London*, and there delivered to the merchant. The merchant sued the master for not bringing a complete cargo, according to his contract: it was argued that the master was excused either by the operation of this clause in the contract, or by that general principle of law, which requires every subject, as a matter of public duty, to save the property and persons entrusted to his charge from falling into the hands of the enemies of his country. But the court held, that neither of these grounds furnished an excuse in the particular circumstances of this case *(h.)*

(h) Atkinson v. *Ritchie*, 10 East, 530. The Judgment delivered by Lord *Ellenborough* well deserves the attention of the learned reader; to have inserted the whole of it would have been inconsistent with the plan of this Treatise, and an abridgment could not have done justice to it.

CHAPTER THE FIFTH.

OF THE LIMITATION OF THE RESPONSIBILITY OF THE OWNERS AND MASTER.

1. IN considering the instances in which the owners are answerable to the merchant for the loss or damage of his goods, I have hitherto forborne to mention the limits of their responsibility, and have treated them as being responsible up to the full extent of the amount of such loss or damage; and so both by the Civil Law and by the Common Law of *England* they formerly were. For although it was decided *(a)* at a time, when the ransom of ships taken by a foreign enemy was not contrary to the laws of the realm *(b)*, that such ransom could not be made at a price exceeding the value of the ship and cargo (and the loss of the value of the cargo would fall upon the merchants), yet until the responsibility of the ship-owner for the loss or damage of goods was limited by statute, it was never doubted but that such responsibility was co-extensive with the loss, and the statutes, which have been made to narrow it, are founded upon that supposition.

The ancient laws of *Oleron*, *Wisbuy*, and the *Hanse-Towns* contain no provision on this subject. Nor is any alteration of the rule of the Civil Law noticed by *Roccus (c)*, although *Vinnius*, an earlier author, says, that by the law of *Holland* the owners are not chargeable beyond the value of the ship and

(a) Helley v. *Grant*, & *Graham & another* v. *Hall*, cited 1 Ter. Rep. K. B. 79.

(b) 22 *Geo.* 3. *c.* 25. prohibits ransom.

(c) The Notabilia of this author, who was a *Neapolitan*, were first published in 1655.

and the things that are in it *(d)*; in conformity to which principle the *French* Ordinance declares, "that the owners "of ships shall be answerable for the acts of the master, "but shall be discharged therefrom upon relinquishing "their ship and the freight *(e)*." A similar provision is contained in the Ordinance of *Rotterdam*, made in 1721, which declares, "That the owners shall not be answerable "for any act of the master done without their order, any "further than their part of the ship amounts to *(f)*:" and by other articles of the same Ordinance it appears that each part owner is liable only for the value of his own share *(g)*. *Valin*, in his commentary on the *French* Ordinance *(h)*, informs us that the same regulations are also established at *Hamburgh (i)*.

2. The earliest provision of the *British* Legislature on this subject is a statute made a few years after the date of the Ordinance of *Rotterdam*, and which was passed in consequence of a petition presented to the House of Commons by several merchants and other persons owners of ships belonging to the port of *London (k)*, setting forth the alarm of the petitioners at the event of a late action, in which it was determined that the owners were answerable for the valuable merchandize embezzled by the master. The foundation of this limitation is mentioned in the preamble of the statute: which states, "That it is of the greatest con-

"sequence

(d) In Peckium, p. 155, published in 1647, the author cites *Grotius*, lib. 3. Introduc. ad. Jurisp. Bat. c. 1. and lib. 2 de jure belli et pacis, c. 11. n. 13.

(e) Liv. 2. tit. 8. *des proprietaires*, art. 2. The encouragement of maritime commerce, especially among the noblesse, was one of the principal objects of this Ordinance. See same book, and tit. art. 1. and *Valin's* preface to that title. See also the *Code de Com.* Art. 216.

(f) Art. 167. 2 *Magens*, 107.

(g) Art. 126, 127. 2 *Magens*, 101, 102.

(h) Tom. i. p. 569.

(i) An extract from the Ordin. of *Hamburgh*, dated 1731, is given in 2 *Magens*, but the article containing this provision is not noticed.

(k) See Commons Journals for the year 1733, page 277. The case referred to by the petition, appears clearly to be that of *Boucher* v. *Lawson*, cited in part 2. chap. 2. sect. 6. The bill went through both houses without a division. The clauses directing proportional compensation and relief in equity were introduced in the House of Lords.

" sequence and importance to this kingdom to promote " the increase of the number of ships and vessels, and to " prevent any discouragement to merchants and others " from being interested and concerned therein: and that " it has been held, that in many cases owners of ships or " vessels are answerable for goods and merchandize ship- " ped or put on board the same, although the said goods " and merchandize, after the same have been so put on " board, should be made away with by the masters or ma- " riners of the said ships or vessels, without the knowledge " or privity of the owner or owners, by means whereof mer- " chants and others are greatly discouraged from adven- " turing their fortunes, as owners of ships or vessels, which " will necessarily tend to the prejudice of the trade and " navigation of this kingdom." It is, " Therefore, for " ascertaining and settling how far owners of ships and " vessels shall be answerable for any gold, silver, diamonds, " jewels, precious stones, or other goods or merchandizes, " which shall be made away with by the masters or mariners, " without the privity of the owners thereof," enacted, " That no person or persons, who is, are, or shall be owner " or owners of any ship or vessel, shall be subject or liable " to answer for, or make good to any one or more person " or persons, any loss or damage by reason of any em- " bezzlement, secreting, or making away with by the " master or mariners, or any of them, of any gold, silver, " diamonds, jewels, precious stones, or other goods or " merchandize, which from and after the 24th day of " *June* 1734, shall be shipped, taken in, or put on board " any ship or vessel, or for any act, matter or thing, da- " mage or forfeiture, done, occasioned, or incurred, from " and after the said 24th day of *June* 1734, by the said " master or mariners, or any of them, without the privity " and knowledge of such owner or owners, further than " the value of the ship or vessel, with all her appurtenances, " and the full amount of the freight due, or to grow due, " for and during the voyage, wherein such embezzlement,

" secreting,

"secreting, or making away with as aforesaid, or other "malversation of the master or mariners, shall be made, "committed, or done; any law, usage, or custom to the "contrary thereof in anywise notwithstanding *(l)*."

3. And by the *second* section of the same statute, if several freighters sustain losses exceeding in the whole the value of the ship and freight, they are to receive compensation thereout in proportion to their respective losses; and any one freighter, on behalf of himself and the other freighters, or any part-owner, on behalf of himself and the other part-owners, may file a bill in a court of equity for the discovery of the total amount of the losses, and of the value of the ship, and for an equal distribution and payment.

But by the *third* section, if such bill is filed by or on behalf of the part-owners, the plaintiff must make affidavit that he does not collude with the defendants, and must offer to pay the value of the ship and freight, as the Court shall direct.

4. And by the *fourth* section, it is provided, declared, and enacted, "That nothing in this present act contained "shall extend, or be construed to extend, to impeach, "lessen, or discharge any remedy, which any person or "persons now hath, or shall, or may hereafter have against "all, every, or any the master and mariners of such ship "or vessel, for or in respect of any embezzlement, secret-"ing, or making away with any gold, silver, diamonds, "jewels, precious stones, or merchandize, shipped or "loaded on board such ship or vessel, or on account of any "fraud, abuse, or malversation of and in such master and "mariners respectively; but that it shall and may be law-"ful to and for every person or persons so injured or da-"maged, to pursue and take such remedy for the same, "against the said master and mariners respectively, as he "or they might have done before the making of this act."

5. By this statute therefore, the legal responsibility of the

(l) 7 *Geo.* 2. *c.* 15. A. D. 1734.

the *master* is left unaltered in all the cases before enumerated, and that of the *owners* also in the case of a robbery committed by persons *not* belonging to the ship. But where a ship in the river *Thames* was forcibly plundered of dollars during the night by a gang of robbers, in consequence of information given by one of the mariners of the ship, who afterwards shared the booty; the responsibility of the owners was held not to extend beyond the value of the ship and freight by virtue of this statute *(m)*.

6. Immediately after the decision of this case, and in consequence of the danger, to which the facts that were disclosed in it, showed the owners to be exposed, another petition was presented to the House of Commons *(n)* on behalf of several owners of ships belonging to *London* and other parts, and in compliance therewith, another statute was passed *(o)*, fixing the same limits to the responsibility of the owners in the several cases mentioned in the preceding statute, and also in the case of robbery, "although "the master or mariners shall not be in anywise con-"cerned in or privy to such robbery, embezzlement, se-"creting, or making away with." This statute also contains the same provisions as the preceding act, for equal distribution and discovery by bill in equity, and also for remedy against the master and mariners; and (as was mentioned in the preceding chapter) has entirely taken away the responsibility of the owners in the case of loss or damage by *fire (p)*.

7. By a subsequent statute, this limitation of the responsibility of the owners has been still further extended, for it is enacted, "That no person or persons who is, are, "or shall be, owner or owners, or part-owner or part-"owners, of any ship or vessel, shall be subject or liable to

(m) Sutton v. *Mitchell*, 1 Ter. Rep. K. B. p. 18.

(n) See Commons Journals for the year 1786, page 296. This act also was passed without a division in either house of parliament.

(o) 26 *Geo.* 3. *c.* 86. *s.* 1.

(p) Chap. 4. of this part. *s.* 8. page 259.

" to answer for or make good any loss or damage arising " or taking place by reason of any act, neglect, matter or " thing done, omitted, or occasioned without the fault or " privity of such owner or owners, which may happen to " any goods, wares, merchandize or other thing, laden or " put on board the same ship or vessel after the 1st of *Sep-* " *tember* 1813, or which after the said 1st of *September*, may " happen to any other ship or vessel, or to any goods, " wares, merchandize, or other thing, being in or on board " of any other ship or vessel, further than the value of " his or their ship or vessel, and the freight due or to grow " due for and during the voyage, which may be in pro- " secution, or contracted for at the time of the happening " of such loss or damage *(q)*."

By this statute, it is also enacted, that the value of the carriage of goods belonging to any of the owners of the ship, and also the hire due or to grow due, under any contract, except only such hire as in the case of a ship hired for time, may not begin to be earned until the expiration of six calendar months after the loss, shall be considered as freight within the meaning of this act, and also of the two prior acts, that have been before mentioned *(r)*. It is also further enacted, that in case any such loss or damage shall happen by more than one separate and distinct accident and so forth, or on more than one occasion in the course of a voyage, or in the interval between the end of one voyage and the commencement of another, every such loss or damage shall be compensated according to the provisions of the act, in the same way and to the same extent as if no other loss or damage had happened during the same voyage or in the same interval *(s)*; but this act does not extend to any vessel used solely in rivers or inland navigation, or to any ship or vessel *not duly registered according to law (t)*.

This

(q) 53 *Geo.* 3. *c.* 159. *s.* 1.
(r) *Sect.* 2.
(s) *Sect.* 3.
(t) *Sect.* 5.

This act also contains a provision against taking away the responsibility of any master or mariner of any ship, notwithstanding he may be an owner or part-owner thereof, and also provisions for equal distribution and relief in equity, somewhat more detailed than those of the former statutes; and as this statute appears in the case of *registered* ships, to comprise the several accidents and neglects which had been provided for by the two former statutes, and may now with regard to *such* ships be considered for most, if not all purposes, as containing the law upon this subject, and is of very general import, it has been thought right to print the statute at large in the Appendix.

The value of the ship is to be calculated at the time of the loss or damage; in calculating the value of the freight, money actually paid in advance, is to be included *(u)*; but the value is to be only the amount that the ship would have earned if she had completed her voyage, and not the amount estimated at the commencement of the voyage, if diminished by jettison or other losses *(x)*. If an action be brought against the several part-owners, one of whom happened to be master of the ship at the time of the loss, all the defendants are in that action entitled to the benefit of the limitation given by the statute. By the law of *England*, the damage to be recovered in an action brought against several persons, must be one and the same sum, judgment cannot be given against one defendant, for a sum differing from that for which it is given against another *(u)*.

The acts do not extend to lighters and gabbets *(y)*.

The fishing stores of a ship employed in the usual manner in the *Greenland* Fishery belonging to the owners of the ship are to be valued as part of the ship and her appurtenances under these statutes, although they are not usually so estimated in policies of insurance, but made the subject of a separate assurance *(z)*.

(u) Wilson v. *Dickson & others*, 2 B. & A. p. 2.

(x) Cannan & others v. *Meaburn*, 1 Bing. 465.

(y) Hunter & Co. v. *M'Gown & others*, 1 Bligh, 573.

(z) Gale v. *Laurie & others*, 5 B. & C. 156. 1. *Haggard*, A. R. 109.

CHAPTER THE SIXTH.

OF THE GENERAL DUTIES OF THE MERCHANT.

1. THE general duties of the merchant (those only excepted, which relate to the payment of freight and of gross average, and which will form the subject of distinct chapters) are comprised in a very narrow compass: the hirer of any thing must use it in a lawful manner, and according to the purpose for which it is let. The merchant must lade no prohibited or uncustomed goods, by which the ship may be subjected to detention or forfeiture *(a)*. In general, even in the case of affreightment by charter party, the command of the ship is reserved to the owners or the master appointed by them, and therefore the merchant has not the power or opportunity of detaining the ship beyond the stipulated time, or employing it in any other than the stipulated service, but by the charter-parties under which ships are let to the *East India Company*, the command and disposal of the ship are reserved to the Company, and the master although appointed by the owners is bound to obey the orders of the Company at home, and of their factors and servants abroad; and it is always stipulated, that nothing shall be paid bythe Company for freight or demurrage, unless the ship returns home in safety *(b)*. Yet in a case where the Company detained a ship so long in *India* that she became unfit for the voyage home, and was disposed of there, so that by reason of the particular stipulations the owners could sustain no action at law upon the contract, a Court of Equity ordered the Company to make a proper

(a) *Roccus*, not. 85. *Dig.* 19. 2. 61. 1. *French* Ordinance, liv. 3. tit. 3. *Fret.* art. 9.

(b) See the clauses cited in *Hotham* v. *East India Company*, ante, chap. 1. of this part, sect. 14. p. 201.

a proper allowance for the actual and probable earnings and the value of the ship (*c*). So where a ship, hired by the Company to be employed according to the then usual terms of their charter-parties in trade and warfare, was sent upon a service of observation and discovery to explore the passage to the eastward of the *Isle of Banca*, and there struck on a rock, and was lost, and the owners brought an action against the Company for thus exposing the ship to danger in a service not warranted by the charter-party without their knowledge or consent, Lord *Kenyon*, before whom the cause was tried, declared himself to be of opinion, that the action was proper in point of general principle, but the plaintiffs failed in their suit, because it appeared that the Company's intention to employ the ship in this service was before her departure from *England* made known to the person, who managed the ship on behalf of the owners, and not objected to on their part (*d*).

2. Some of the ancient maritime codes and more modern foreign ordinances (*e*) have fixed the payment to be made by the merchant, who, having taken a ship to freight, declines to lade her in pursuance of his agreement, or who, before the commencement, or during the course of the voyage, withdraws his goods from the ship, or having hired a ship to go to a distant port and engaged to furnish a cargo homeward, fails to do so, whereby the ship is forced to return empty; and have decided that in some instances the whole, in others a moiety of the sum, that would have become due as freight, shall be paid as compensation to the owners.

(*c*) *Edwin & others* v. *East India Company*, 2 Vern. 210.

(*d*) *Lewin & others* v. *East India Company*, Peake's Cases at *Nisi Prius*, p. 241. It was an action upon the case, and the plaintiffs were nonsuited; they afterwards brought another action in the Court of Common Pleas, which was tried before Lord *Eldon* at the Sittings after Hil. Ter. 1800, and were again nonsuited on the same ground. The terms of the charter-parties are now altered, and the ships are hired to be employed in trade and in warfare. *and on any other service whatsoever.*

(*e*) Ordin. of the *Hanse-Towns*, art. 11. *French* Ordinance, liv. 3. tit. 3. *Fret.* art. 3 & 6. and 8 & 9. and *Valin* thereon. *Guidon*, chap. 9. art. 11. *Code de Com.* Art. 288. 291.

owners. But in all these cases the law of *England* leaves the amount of the compensation to be ascertained by a jury, if the parties cannot agree about it: and a jury will form their estimate upon a consideration of all the circumstances of the case, and of the real injury sustained by the owners, which cannot be properly settled by positive rules.

3. We have seen by a copy of the bill of lading *(f)*, that the master undertakes to deliver the goods upon the payment of freight with primage and average accustomed.

The word *primage* denotes a small payment to the master for his care and trouble, which he is to receive to his own use, unless he has otherwise agreed with his owners. This payment appears to be of very ancient date, and to be variously regulated in different voyages and trades. In the *Guidon* it is called "*la contribution des chausses ou pot de vin* "*du maitre.*" It is sometimes called the master's hat money.

The word *average* in this place denotes several petty charges, which are to be borne partly by the ship and partly by the cargo, such as the expence of towing, beaconage, &c. Some of the foreign Ordinances specify the particulars that fall under this head, and the mode of distributing the charge *(g)*, but with us they depend entirely upon usage, and an attempt to enumerate them would afford neither instruction nor entertainment.

This and the preceding article of primage are often commuted for a specific sum or a certain per centage on the freight.

(f) Ch. 2. of this part, sect. 3.

(g) French Ordin. liv. 3. tit. 7. *Avaries*, art. 8 & 9. and Ordin. of *Stockholm*, tit. *Average*, art. 1. 2 *Magens*, 277. Ordin of *Wisbuy*, art. 44. 56. 59, 60. *Guidon*, chap. 5. art. 12 to 19. and *Cleirac* on the 24th art. of the laws of *Oleron*. But by the *Code de Com.* Art. 406. The expence of towage, &c. is to be borne by the ship alone.

CHAPTER THE SEVENTH.

OF THE PAYMENT OF FREIGHT.

1. IN treating of the payment of the *freight*, the principal duty of the merchant, I shall consider, *first*, the cases in which the entire freight is to be paid according to the terms of the contract; and, *secondly*, those in which a part only of the stipulated sum may be claimed.

It may be proper, however, to premise that payment of the freight to the owners on their demand, will be a discharge against a claim by the master, not only in the case of goods brought in a general ship; but also in the case of an agreement not under seal, made between the master and the charterer, and although the master may have previously given notice to the charterer not to pay the freight to any person but himself *(a)*.

The contract for the conveyance of merchandize is in its nature an entire contract: and unless it be completely performed by the delivery of the goods at the place of destination, the merchant will in general derive no benefit from the time and labour expended in a partial conveyance, and consequently be subject to no payment whatever, although the ship may have been hired by the month or week. The cases, in which a partial payment may be claimed, are exceptions to the general rule, founded upon principles of equity and justice, as applicable to particular circumstances. On the other hand, an interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture *(b)*. But although the

(a) *Atkinson* v. *Cotesworth*, 3. B. & C. 647.

(b) The RACE-HORSE, *White*, 3 Rob. A. R. 101. And see the observations

the delivery of goods at the place of destination is in general necessary to entitle the owner to the freight, yet with respect to living animals, whether men or cattle, which may frequently die during the voyage without any fault or neglect of the persons belonging to the ship, it is said *(c)*, that if there be no express agreement whether the freight is to be paid for the lading, or for the transporting them, freight shall be paid as well for the dead as for the living; if the agreement be to pay freight for the *lading* them, their death certainly cannot deprive the owners of the freight; but if the agreement be to pay freight for *transporting* them, then no freight is due for those that die on the voyage, because as to them the contract is not performed. These distinctions are found in the civil law, and adopted by all the writers on this subject. In this country it is not unusual to pay for goods shipped for the *East* or *West Indies*, at the time of the shipment. But this payment, although commonly called *freight*, is not strictly or properly so denominated; that word denoting the price rather of actual carriage, than of receiving goods in order to be carried; and therefore in a case before the Court of Common Pleas, the Court, admitting that an action might be brought for money agreed to be paid for receiving goods on ship-board, in order to be transported, decided that such money could not be sued for or recovered *by the name of freight (d)*.

Some time after this determination, an action was brought upon a supposed agreement of the nature here alluded to; the plaintiff alleging, that in consideration of his undertaking to receive on board his ship certain goods belonging to the defendant, to be carried therein from *London*

observations of Mr. Justice *Chambre* and Lord *Alvanley*, in the case of *Beale* v. *Thompson*, 3 Bos. & Pull. 420 & 431, upon the dictum of the late Chief Justice *Eyre* on this subject, in the case of *Curling* v. *Long*, 1 Bos. & Pull. 637.

(c) Dig. 14. 2. 10. *Roccus*, not. 76, 77, 78. *Molloy*, book 2. chap. 4. sect. 8. See also *Moffat* v. *East India Company*, ante, chap. 1. of this part, *sect.* 16. *b.* page 206.

(d) Blakey v. *Dickson*, 2 Bos. & Pull. 321.

London to *Lisbon*, the defendant promised to pay him a certain sum of money *on the shipment* of the goods. The bills of lading were the only evidence offered by the plaintiff at the trial of the cause to prove his allegation: these imported, in the usual way, that the goods were to be delivered at *Lisbon*; but the clause respecting the payment of freight, in some of them, ran thus, "freight for the said "goods being paid in *London*;" and in others, thus, "the "shippers paying freight for the said goods in *London*." The ship was lost on the voyage. Lord *Ellenborough*, before whom the cause was tried, was of opinion, that these words meant no more than that the freight should be paid in *London* instead of *Lisbon*, and did not dispense with the performance of the voyage; and added, that if the shipper had paid the freight upon the shipment of the goods, he might have recovered it back again. The plaintiff therefore failed in his suit *(e)*.

This case turned *wholly* on the bill of lading; there was no indication of an intent, that if the freight were not earned, the money might not be recovered back; but in a cause since decided in the Common Pleas, the bill of lading containing the words "freight for the said goods "being paid," the broker who freighted the ship, proved that the contract for the conveyance of the goods was verbal, and that he told the defendant that the price of the freight of goods upon a voyage from *London* to the *Cape*, was 5 *l.* paid in *London*, or 7 *l.* paid at the *Cape*; the defendant preferred the contract at 5 *l.* per ton. Soon after the vessel had sailed, the broker called on the defendant for payment, who answered he would call and pay it on the following Monday. The ship was lost. *Gibbs*, Chief Justice, left it to the jury to consider, whether the agreement intended merely to change the place where the freight should be payable, in case any freight should be earned; or whether in lieu of a contract for freight, it was intended that this sum should be

(e) Mashiter v. *Buller & another*, 1 Camp. 84.

be payable in all events after shipping the goods; and the jury found, that the meaning of the agreement was, that the money should be paid at all events upon the delivery of the goods on board the ship at *London*. The Court refused to disturb the verdict, and *Gibbs* Chief Justice, said, "here is an indication not only of the place where "the money was to be paid, but also of the time when "it was to become due, which was not the case in "*Mashiter* v. *Buller*, and added, it signifies not what name "is given to the money; the defendant is misled by the "ambiguity of the phrase freight; there is no doubt but "that a man may agree to pay money on the delivery of "the goods cn board the ship, call it what you will *(f)*.

Whether money advanced by the merchant, is to be considered as a loan to be reimbursed by the owner, or as part payment of the freight not dependant upon the determination of the voyage, must depend upon the terms of the written instrument upon the construction of which the question arises. A charter-party contained a covenant, that "120 *l.* should be paid upon freight of the outward cargo "to *Maranham*, and as much cash as might be found ne-"cessary for the vessel's disbursements in *Maranham*, to "be advanced by the merchant, his agents or assigns, to the "master when required, *free from interest and commission* "at the current exchange of the place, *and the residue of such* "*freight* to be paid on delivery of the homeward cargo in *Li-*"*verpool*." The ship having been lost by capture, the Court of King's Bench decided that the merchant was not entitled to recover back under this charter-party, money advanced by him for the vessel's disbursements in *Maranham (g)*. But where the words, "The captain to be supplied with "cash for the ship's use," followed, a covenant for payment of freight, one half in cash on delivery of the cargo, and the remainder

(f) Andrew & another v. *Moorhouse*, 5 Taunton, 435. and 1 Marshal, 122.

(g) De Silvale v. *Kendall*, 4 M. & S. 37.

remainder by bill, in pursuance of which the master drew a bill on the merchant which was accepted and paid, this was decided to be a loan to be reimbursed by the owner *(h)*.

If a pregnant woman be delivered during the voyage, no freight is due for the infant *(i)*.

2. When goods are sent in a general ship in pursuance of the second species of contract before mentioned, the amount of the freight is either settled by the agreement of the parties, or by the usage of the trade. In the case of a charter-party, if the stipulated payment is a gross sum for an entire ship, or an entire part of a ship, for the whole voyage, the gross sum will be payable although the merchant have not fully laden the ship. And if a certain sum be stipulated for every ton, or other portion of the ship's capacity, for the whole voyage, the payment must be according to the number of tons, &c. which the ship is proved capable of containing, without regard to the quantity actually put on board by the merchant *(k)*, or to the number of tons burthen mentioned in the description of the ship *(l)*. On the other hand, if the merchant has stipulated to pay a certain sum per cask or bale of goods, the payment must be in the first place according to the number of casks or bales shipped and delivered *(m)*, and if he has covenanted to pay freight on skins by the pound, net weight at the king's beam, freight is due on the outside skins in which the packages are contained *(n)*. And where again he has covenanted to furnish a complete lading, or a specific number

(h) Manfield & another v. *Maitland*, 4 B. & A. 582.

(i) Roccus, not. 79. *Molloy*, book 2. chap. 4. sect. 8.

(k) Roccus, not. 72. 75.

(l) Hunter v. *Fry*, 2 B. & A. 421.

(m) Roccus, not. 73. 75. A bill of lading, dated at *Dantzic*, contained in the margin the words 100 lasts of wheat in 2,092 bags. It was not proved that the wheat had been measured, but evidence was given that the *Dantzic* measure was larger than the *English*, and that the wheat was brought by the latter. The freight was to be a certain sum per last; and it was held that the specified number of bags must be considered as between the parties to contain 100 lasts, as mentioned in the bill of lading. *Molloy* v. *Living*, 4 Taunt. 102.

(n) Moorsom v. *Page*, 4 Campbell, 103. See also p. 279.

ber of casks or bales, and failed to do so, he must make good the loss which the owners have sustained by his failure, to be settled, in case of disagreement, by a jury, who will take all the circumstances into their consideration, and make a due allowance to the merchant for the profit which the master may have made by bringing the goods of other persons, if any have been brought *(o)*. In all such cases the proper course is to estimate the freight by means of an average, so as to take neither the greatest possible freight, nor the least, and such an average is the proper measure of damages *(p)*. And in a cause where the charterer of a ship, for a voyage to *Tobago* and back, covenanted to load and dispatch her in time to join the convoy that should be appointed to sail from the *West Indies*, on the 1st of August, it was held that he was liable for not having loaded and dispatched her by the 22d of July, the day the *West India* convoy passed the island of *Tobago*, although he offered to load her with a complete cargo, if she would stop a few days longer, and a verdict was obtained for the amount of the dead freight claimed *(q)*.

In an action against the merchant for not loading and dispatching the ship according to the memorandum for charter, wherein she was described as "The *Swedish* ship or "vessel called the *Maria*," he cannot set up as a defence, that she was in point of fact a *British* and not a *Swedish* ship *(r)*. And where the payment is to be made by cask or bale, the merchant must pay for what has been brought, although the master engaged to bring a full cargo and refused to do so, the proper remedy for such refusal being an action against the master upon his covenant, as hath been before observed *(s)*. Where a ship hired to go beyond sea, to

(o) Puller & another v. *Staniforth*, 11 East, 232. See before, chap. 1. of this part. sect. 13. *b.* page 197.

(p) Thomas v. *Clarke & another*, 2 Starkie, 450.

(q) Thompson v. *Inglis & others*, 3 Campbell, 428.

(r) Reusse v. *Meyers*, 3 Campbell, 475.

(s) Ritchie v. *Atkinson*, 10 East, 295. See before, chap. 1. of this part, sect. 12. *b.* page 193.

to fetch home a cargo for which a cereain rate *per ton* was to be paid, (nothing being payable for the outward voyage), was forced to return in ballast, the merchant's factor having no goods to put on board, the Court of Chancery decreed payment of the freight *(t)*.

If an entire ship be hired, and the burthen thereof expressed in the charter-party, and the merchant covenant to pay a certain sum for every ton, &c. of goods which he shall lade on board *(u)*, but do not covenant to furnish a complete lading, the owners can only demand payment for the quantity of goods actually shipped *(x)*. And where the merchant covenanted to provide a full and complete cargo, consisting of copper, tallow, and hides, or other goods, on which separate rates of freight were to be paid, it was held that having supplied her with as large a quantity of tallow and hides as she chose to take on board, he was not found to provide any copper, although from the want of it the ship was obliged to keep in her ballast, and did not make so advantageous a freight as she otherwise would have done *(y)*.

3. In all the instances before mentioned the owners take upon themselves the chance of the long or short duration of the voyage. But if the merchant engage to pay a certain sum for every month, week, or other portion of the voyage, in this case, the risk of the duration falls upon the merchant: and if no time be fixed for the commencement of the computation, it will begin from the day on which the ship breaks ground, and commences the voyage, and will continue during the whole course of the voyage, and during all unavoidable delays not occasioned by the act

(t) *Westland* v. *Robinson*, cited 2 Vern. 212.

(u) The merchant freighter cannot insist upon the precise burthen mentioned in the charter-party, unless the misrepresentation has been fraudulent. *Thomas* v. *Clarke & another*, 2 Starkie, 452.

(x) Lady *James* v. *E. I. Company*, coram *Kenyon*, Ch. J. at Guildhall, Sit. p. Mich. T. 1789. *Roccus*, not. 75.

(y) *Moorsom* v. *Page*, 4 Campbell, 103. See p. 277.

act or neglect of the owners or master, or by such circumstances as work a suspension of the contract for a particular period *(z)*. Thus the freight will be payable for the time consumed in necessary repairs during the voyage, if it do not appear that the ship was insufficient at the outset, or that there was any improper delay in repairing her *(a)*. So in the case of a ship hired for a voyage to any port or ports in *St. Domingo* and back to *London*, which, having discharged part of her cargo at one port in that island, was peremptorily ordered by the supercargo to proceed to another, then under blockade by General *Christophe*, by one of whose cruizers she was taken on the way, and detained for some weeks, during which time the remainder of the cargo was confiscated; the ship being afterwards liberated, and having brought home a cargo, Lord *Ellenborough* thought, "that as the ship was taken in proceeding to a "port by order of the supercargo, the voyage was never "discontinued, and the freighters were answerable for the "subsequent detention, in the same manner as if it had "arisen from contrary winds or from embargo:" and the owner recovered the monthly freight for the period of detention *(b)*.

In this case of the payment of freight, as in other mercantile contracts, a month is to be understood of a *calendar* not a *lunar* month *(c)*.

4. The time and manner of payment of freight are frequently regulated by express stipulations in a charter-party, and when that is done, the payment must be according to the agreement. If there be no express stipulation, we have already seen that the master is not bound to part with the goods, until his freight is paid; and where by the regulation of the revenue the goods are to be landed and put into

(z) See the judgment delivered by Mr. Justice *Heath*, in the case of *Beale* v. *Thompson*, 3 B. & P. 405.

(a) *Havelock* v. *Geddes & others*, 10 East, 555. *Ripley* v. *Scaife*, 5 B. & C. 167.

(b) *Moorsom* v. *Greaves & others*, 2 Camp. 627.

(c) *Jölly* v. *Young*, 1 Espin. N. P. cases, 186.

into the King's warehouse, if the duties are not paid, the master may enter them in his own name, and thereby preserve his lien.

It is often provided in charter-parties, that the goods shall be delivered agreeably to bills of lading to be signed by the master; and the master upon receiving the goods signs bills of lading for delivery on payment of freight, or with words of similar import, giving him a right to refuse to make delivery to the person designated by the bill of lading, without payment of the freight. And as it has sometimes happened that the master has not insisted upon the exercise of this right, it has been much questioned whether the merchant charterer was answerable for the freight; and it has been decided that he is answerable. The earliest case on this point came originally before Lord *Kenyon* at Guildhall, and he was of opinion that the merchant was not answerable; but the Court of King's Bench being afterwards of a different opinion, the cause was tried a second time, and the merchant was compelled to pay *(d)*. In this case the bills of lading were for delivery to the defendant (who was the charterer) *or his assigns, he or they paying the freight:* he indorsed them specially to K. & Co. on condition only that they would accept, or in writing promise to accept, certain bills of exchange, and would also promise in like manner to account with R. & Co. to whom half the cargo belonged, for a moiety of the proceeds, and on their refusal so to do, then to deliver to D. & Co. first obtaining from them a similar promise in writing to accept the bills, and to account to the defendant for a moiety of the proceeds. K. & Co. refused, and the cargo was delivered to D. & Co. but no promise in writing was obtained from

(d) Penrose & others v. *Wilks*, Sit. after Hil. Term, 1790. The following account of the bills of lading, &c. is taken from the judgment of the Court as delivered by Lord *Ellenborough* in *Shepard* v. *De Bernales*, 13 East, 570. The note, from which this case was quoted in the first edition of this book, was taken by the author very early in his professional life.

from them. They did however in fact pay the bills, and account for the defendant's moiety, and gave him credit for all the freight; notwithstanding which he continued greatly in their debt. Lord *Kenyon* thought, upon the first trial, that the bill of lading imposed upon the captain the obligation at his peril to get the freight on delivering the cargo: but the Court thought otherwise, and granted a new trial. Upon the second trial Lord *Kenyon* told the Jury, that he conceived at the first trial that the charter-party was controlled by the bills of lading, and imposed upon the plaintiff the duty of recovering the freight: but that the Court of King's Bench thought the bills of lading imposed no such duty upon him; and whatever his (Lord *Kenyon*'s) private opinion was, he was bound to say he was at first mistaken. And the plaintiff thereupon had a verdict for £. 967. 16*s*.

The next case upon this subject occurred about ten years afterwards. It was an action for freight upon a charter-party, wherein the defendant stipulated to pay the freight *on delivery of the cargo according to the bill of lading*. The form of the bill of lading is not mentioned in the report, but it was probably in the usual form. It was certainly intended that the freight should be paid by the consignee; he being indebted to the defendant in more than that amount. Part of the freight was paid abroad, but for *part* of it, viz. 500*l*. the master *took a bill* drawn by the consignee upon the merchant, and that being dishonoured, he sued upon the charter-party for this part of the freight. Now had it been his duty to receive payment of the freight before he parted with his cargo, he would have taken this bill at his peril, and he could never afterwards have resorted to the defendant upon the charter-party: but, upon a case reserved, the Court of King's Bench thought it very clear that he was warranted in delivering the cargo as he did, and that the defendant was liable to the action *(e)*.

In

(e) Tapley v. *Martins*, 8 Ter. Rep. in B. R. 451.

In another case, which was before the Court of Common Pleas, there was a charter-party, and a bill of lading in the usual form, and the Court held that the master was not bound at his peril to insist upon his freight at the time of delivering the goods; but that if he delivered the goods, and could not afterwards get the freight from the consignee, he might sue the merchant for it upon the charter party *(f)*.

In the last case upon this subject, the three former were very much considered, and the decision of the Court of King's Bench was conformable to them. This arose on the charter-party of the ship *Hopewell*, by which the master engaged to receive a cargo of tobacco at *London*, and sail therewith to *Tangiers*, where he would apply to the correspondents, factors, or agents of the merchant, for orders, and wait for the same fifteen days, whether he was to deliver the cargo at that port or proceed therewith to *St. Lucar* or *Cadiz*, and that having received such orders, he would, pursuant thereto, make a right and true delivery to the correspondents, factors, or agents of the merchant, agreeably to bills of lading; and the merchant covenanted to load a complete cargo, and also to receive the same at *Tangiers*, *St. Lucar*, or *Cadiz*, giving notice to the master at what port the cargo was to be discharged within fifteen days after the ship's arrival at *Tangiers*, and to pay to the master immediately on a right and true delivery of the cargo in full for the freight of the ship for the voyage, at the rate of 3*l.* 13*s.* 6*d.* per hhd. received out of her, together with 10*l.* per cent on the amount of the said freight for primage, and thirty guineas as a gratification to the master. The ship received a cargo of tobacco; and the master signed bills of lading, expressing the ship to be bound for *Tangiers*, and from thence to *St. Lucar*, and that the cargo was to be delivered to one *John* de la Piedra, or in his absence to his Catholic Majesty's Consul-General at *Tangiers*, or to their assigns, *he or they paying freight for the said goods*, three guineas

(f) *Christy* v. *Row*, 1 Taunton, 300. See sect. 9. *b.* of this chapter.

guineas and a half for each cask, 10 *l.* per cent primage, and thirty guineas gratification; the whole at the current exchange at *Cadiz* on *London*, with primage and average accustomed. Upon this charter-party, the master sued the merchant for the freight, &c. and alledged that the ship arrived at *Tangiers*, and that he there made application to *John* de la Piedra, the correspondent and agent of the merchant in that behalf, to know whether the delivery was to be there or at *St. Lucar* or *Cadiz*; that *John* de la Piedra ordered him to proceed with the cargo to *Cadiz*, whereby he was prevented from delivering to any of the correspondents, factors, or agents of the merchant at *Tangiers* or *St. Lucar* according to the bills of lading, and he proceeded in obedience to the order to *Cadiz*, and there delivered the cargo according to the orders and directions of one *Benito* de la Piedra, the agent of the merchant in that behalf. These facts were admitted by the merchant *(g)*, who contended that the freight could not be recovered of him, for these reasons: first, because the master ought not to have delivered the cargo without receiving the freight; secondly, because he ought not to have gone to *Cadiz*, only *Tangiers* and *St. Lucar* being mentioned in the bill of lading; and thirdly, because he ought not to have delivered to the merchant's agent at *Cadiz*, who was said to be a stranger to the bill of lading. But the Court determined, that no one of the reasons assigned afforded a sufficient answer to the master's claim. As to the second reason, it was held that the omission of *Cadiz* in the bill of lading was for the master's benefit, to relieve him from going thither if he should wish to decline it, but that it did not take from him the power of going thither, if he should be willing to do so, and the merchant's correspondent should desire it; as to the third reason, it was held, either that *Benito*, the merchant's agent at *Cadiz* might be looked upon as virtually the appointee of *John* de la Piedra, and so might take under

(g) The cause came before the Court upon a demurrer to the declaration.

under the bill of lading as *his assign*; or that *John* must be considered as refusing to accept or to make any appointment, and then the master could not do otherwise than deliver to the agent of the merchant himself. Upon the first reason, which relates to the point, for which the case has been quoted in this place, Lord *Ellenborough*, in delivering the judgment of the Court, stated the question to be, whether this clause was introduced for the merchant's security, and made it incumbent on the master, at his peril, to look to the consignee under the bill of lading for payment of the freight, in which case he would have no right to deliver to the merchant's agent without first receiving the freight, and a delivery without payment of it would not be "a right and true delivery;" or whether it was introduced for the master's benefit only, and merely to give him the option, if he should think fit, to insist upon receiving the freight abroad, before he would deliver the goods; in which case he might waive the benefit of this provision in his favour, and might deliver them without first receiving payment, and would not be thereby precluded from having resort to the merchant afterwards: and the Court held the latter to be the true construction of the contract. The former cases were considered as proving, that a clause of this kind does not in general cast upon the master the duty of obtaining, at his own peril, the freight from the consignee, but that if he cannot get it from *him*, he may insist upon having it from the charterer; and the particular circumstances of this case were held not to warrant the Court in saying, that the contrary was intended by the parties to this contract *(h)*.

If a consignee *receive* goods in pursuance of the usual bill of lading, by which it is expressed that he is to pay the freight, he by such receipt makes himself debtor for the freight, and may be sued for it *(i)*. But a person, who is only an agent for the consignor, and who is known to the

(h). *Shepard* v. *De Bernales*, 13 East, 565.

(i) *Roberts* v. *Holt*, 2 Show. 443. This was probably the case of a *general* ship.

the master to be acting in that character, does not make himself personally answerable for the freight by receiving the goods, although he also enters them in his own name at the Custom-house *(k)*. In a case where the consignee, known as such to the master, sold the goods before they were landed, and the buyer received them, and entered them in his own name at the Custom-house, it was once held by Lord *Kenyon* that the consignee only, and not the buyer, could be sued for the freight *(l)*, and this opinion seems to have been adopted by the present learned Judge of the Court of Admiralty in the decision of a cause before him *(m)*. But the point, having been since more maturely considered, it has been decided, that although there be no original privity of contract between the purchasers from consignees and the owner, yet the taking of goods by purchasers *under a bill of lading* is evidence of a new agreement by them, as the ultimate appointees of the shippers, to pay the freight for the carriage of the goods, the delivery being stipulated with the shippers to be made to the consignees named in the bill of lading or their assigns, he or they paying freight for the same *(n)*. And this opinion seems most consonant to sound reason; for if a person accepts any thing, which he knows to be subject to a duty or charge, it is rational to conclude that he means to take the the duty or charge upon himself; and the law may very well imply a promise to perform what he so takes upon himself.

But on the other hand, if the indorsees of a bill of lading obtain goods *not under the bill of lading*, but under *an order signed by the consignees for that purpose*, this is not sufficient ground to raise an implied assumpsit on their part to pay the freight, even although the goods be entered at the Custom-house in their name, unless it appear from previous dealings that they were in the habit of receiving goods in the

(k) *Ward* v. *Felton*, 1 East, 507.

(l) *Artaza* v. *Smallpiece*, 1 Espin. N. P. Cas. 23.

(m) The Theresa Bonita, *De Jong*, 4 Rob. 236.

(n) *Cock* v. *Taylor & another*, 13 East, 399.

the same manner, and paying freight for them, and this will then be considered sufficient to raise such an implied promise *(o)*. And the indorsee of such a bill of lading, making goods deliverable to order or assigns on payment of freight, although he has paid over the proceeds of the goods to the person who indorsed the bill of lading to him before being called upon to pay the freight, will still be liable for it *(p)*.

In these several cases, the owner is not stated to have made any express stipulation for the payment of freight, under a charter-party, and the bill of lading was the only contract; but where there is a clear original contract under seal, and the indorsees of the bill of lading for valuable consideration, do not stipulate at the time of receiving the goods to pay the freight, as the law will not raise an implied promise from the mere receipt of the goods, where there is such an express agreement between the owner and charterer, an indorsee under such circumstances is not liable for freight *(q)*. An action grounded upon a supposed implied promise of this kind, was brought against *three* persons, who being in partnership caused goods to be sent from abroad in the name of another person, to which other person the bill of lading was made out. Before the arrival of the goods, the defendants dissolved their partnership, and made an assignment of all their effects to a trustee for the benefit of their creditors, whom the trustee covenanted to indemnify against all deficiency. The trustee then employed *two* of the defendants, as importers of the cargo under him, excluding the *third* defendant; and to these *two* acting under the trustee, the cargo was delivered. It was decided that an implied promise to pay the freight, could not under these peculiar circumstances be raised against all the *three*, one of them not having actually received the goods, nor being otherwise interested in them, than

(o) Wilson & others v. *Kymer & others*, 1 M. & S. 157.

(p) Bell & another v. *Kymer & others*, 5 Taunton, 477. 1 Marshal, 146. 3 Campbell, 545.

(q) Moorsom & another v. *Kymer & others*, 2. M. & S. 303.

than as a remote cestuique trust, upon the improbable contingency that the partnership effects would be more than sufficient to discharge the partnership debts. And the plaintiff failed in his suit *(r)*.

5. In some cases freight is to be paid, or rather an equivalent recompense made to the owners, although the goods have not been delivered at the place of destination, and so the contract for conveyance is not strictly performed. Thus, if part of the cargo be thrown overboard for the necessary preservation of the ship and the remainder of the goods, and the ship afterwards reach the place of destination *(s)*, the value of this part is to be answered to the merchant by way of general average, and the value of the freight thereof allowed to the owner in the manner that will be explained hereafter. So if the master be compelled by necessity to sell a part of the cargo for victuals or repairs, the owners must pay to the merchant the price, which the goods would have fetched at the place of destination, and therefore are allowed to charge the merchant with the money, that would have been due, if they had been conveyed thither *(t)*.

The *French* Ordinance also directs the payment of freight in another instance, which I do not find provided for in any other Ordinance, or mentioned by any author except with reference to this particular article of the *French* Ordinance, which is as follows: "If it happen that commerce be pro-" hibited with the country, to which a ship is in the course " of sailing (*en route*), and the ship be obliged to return " with its lading, there shall be due only the freight out-" ward, although the ship be hired out and home *(u)*." This article is also repeated in the Code de Commerce. The commentators on this article agree that the freight outward must be paid, if the ship be freighted outward only *(x)*.

6. If

(r) *Pinder* v. *Wilks & two others*, 5 Taunton, 612. 1 Mars. 248.

(s) *Roccus*, not. 89. *French Ordinance*, liv. 3. tit. 3. *Fret.* art. 13.

(t) *French Ordinance*, liv. 3. tit. 3. *Fret.* art. 14. Ordin. of *Wisbuy*, art. 35. & 69. ante, part 3. ch. 3. sect. 10. *Code de Com.* art. 298.

(u) *French Ordinance*, liv. 3. tit. *Fret.* art. 15. *Code de Com.* art. 299.

(x) *Valin*, tom. 1. p. 657, *Pothier*, Ch. Partie, num. 69.

6. If in a time of war a neutral vessel carrying goods belonging to the subjects of one of the belligerent powers, be taken by those of the other (in which case the goods are lawful prize, but the ship is to be restored), the captor pays the whole freight, because he represents the enemy, by possessing himself of the enemy's goods *jure belli*; and although the whole freight has not been earned by the completion of the voyage, yet, as the captor, by his act of seizure, has prevented its completion, his seizure shall operate to the same effect as an actual delivery of the goods to the consignee, and shall subject him to the payment of the full freight *(y.)* This however is to be understood of such goods only, as a neutral vessel may convey by the law of nations, and of a trade ordinarily allowed to the neutral nation by the government, to whose subjects the goods belong. If the goods are contraband according to the law of nations, such as naval stores, &c. no freight is to be paid by the captor *(z)*; and this whether the master know the quality of the goods or no; for in time of war he is bound to know the contents of his cargo, and cannot be permitted to aver that he was ignorant of them *(a)*; nor is any freight to be paid by the captor, if the ship is employed in bringing the produce of the colony of a belligerent power to the mother country *(b)*, or in the coasting trade between one port and another of the same country *(c)*, or in carrying the goods, even of neutrals, directly from the mother country to its colony *(d)*, or from one hostile nation to the colony of another hostile nation in alliance with it *(e)*, if these trades were not, in time of peace, open to the neutral nation, whose ship is so employed; because in all

(y) The COPENHAGEN, *Mening*, 1 Rob. 289.

(z) The MERCURIUS, *Meincke*, id. 288.

(a) The OSTER RISOER, *Jurgenson*, 4 Rob. 199.

(b) The REBECCA, *Moore*, 2 Rob. 101. See also the AMERICA, *Sherborne*, id. vol. 3. p. 36.

(c) The EMANUEL, *Soderstrom*, 1 Rob. 296. and the MERCURIUS there cited.

(d) The IMMANUEL, *Eysenberg*, 2 Rob. 186. and the ANNE, *Lord*, id. vol. 3. p. 91. note *a*. and the NANCY, *Joy*, id. p. 82.

(e) The ROSE, *Young*, 2 Rob. 206.

all these cases, it is evident, that the trade is opened in the time of war merely for the convenience of the belligerent power, and to relieve that power from a part of the difficulties occasioned by the war; and the neutral vessel so employed, thereby furnishes direct assistance to the belligerent power. But as trade from a port of one nation to a port of another is in general open to all countries, freight is to be paid to the owners of a neutral ship employed in carrying the goods of an enemy from a port of one nation hostile to the captors, to a port of another nation equally hostile *(f)*.

Again, if a ship be taken and retaken, and carried by the recaptors into a port short of the place of destination, and the ship be there restored, before the cargo is restored, either by reason of a delay on the part of the merchant to claim the cargo, or of doubt or litigation upon his right to restitution, the Court of Admiralty does not require the ship to wait the doubtful event of the claim of the cargo, in order to convey it to the place of destination, but gives the owners their whole freight, subject only to the deduction of salvage upon the amount of it *(g)*. And this with great justice; for the capture is not imputable to the master; the delay of obtaining restitution of the cargo is imputable to the merchant.

If the ship of an enemy, carrying the goods of a neutral be taken, and the captor conduct the ship and cargo to the place of destination, and so fulfil the contract of the master, the captor is entitled to receive the freight of the goods upon their restitution to the merchant; but he is not entitled to this, if he take the ship to a different port, and do not perform the original voyage *(h)*: not even if the proprietor

(f) The WILHELMINA, *Carlson*, 2 Rob. 101. *notis.*

(g) The RACE HORSE, *White*, 3 Rob. 101. and see the cases cited in the note at the end of that report. See also the HOFFNUNG, *Rask*, 6 Rob. 231.

(h) The FORTUNA, *Tadsen*, 4 Rob. 278, and the case of the VREYHEID; and also Bynkershoek, Quest. J. Pub. lib. 1. c. 13. there cited. This is different from the old rule as laid down in the *Consolato del mare*, ch. 173.

prietor of the cargo afterwards dispose of it at the place to which the ship may be carried *(i)*.

6. *b.* Freight is the reward which the law entitles a person to recover for bringing goods lawfully upon a legal voyage; if the voyage be illegal by reason of the goods being contraband, or for any other cause, freight cannot be recovered. During the late wars, licences were frequently granted by the *British* government for voyages and importations which would otherwise have been illegal. The duration of these licences was usually limited. In general, if the voyage was begun before the expiration of the limited time, though not completed until afterwards, the voyage was considered as legal. But in a case, where in consequence of an embargo in a *French* port, the voyage was not begun until some time after the expiration of the licence, it was held that the freight could not be recovered, although by an order of council, the freighter was permitted to land the cargo, upon condition of exporting it again immediately, this permission not being considered to legalize the voyage by implication, nor to have the effect of a continuation of the licence *(k)*.

In another case, in an action brought by the master of a foreign ship for the freight of goods imported into this country, it appeared in evidence that on the ship's arrival with the cargo, the merchant entered her at the Custom House, and a delivery of the cargo in his name was commenced by him; but on the following day the ship and cargo were seized by the revenue officers, on suspicion that the ship was not *Prussian* built, and therefore not capable under the Navigation Act *(l)*, of importing the produce of that country into *England*. The Treasury, on petition presented on behalf of the master and owners, and with the concurrence of the merchant, ordered the ship to be restored,

(i) Vrow Anna Catherina, *Mahts*, 6 Rob. 269.

(k) *Muller* v. *Gernon*, 3 Taunton, 394.

(l) 12 Car. 2. *c.* 18. *s.* 8. Since repealed, but see 6 *Geo.* 4. *c.* 109. *s.* 2. printed in the Appendix.

restored, on condition that the cargo should be landed and warehoused for a limited time for exportation only, and on payment of a sum as satisfaction to the seizing officers. This sum the master paid, and the merchant accepted and exported the cargo. It was clear that, supposing the voyage to be illegal, the freight could not be recovered, and the conduct of the master was held to be sufficient proof of the illegality, although the ship had not been condemned *(m)*.

7. As it may frequently happen that goods brought in specie to the place of destination, may be so deteriorated during the course of the voyage, as to be of no value to the merchant, it is important to consider, whether the merchant is bound to pay the freight under such circumstances; or, to state the question more correctly, whether he is bound to receive the goods, or is at liberty to abandon them for the freight. For we have already seen, in the case of an *East India* ship, that the Company (the merchants) were held liable to pay the freight of a quantity of pepper delivered to, and received by them, although greatly damaged by a peril of the sea; and that the owners were not answerable for the expense incurred in endeavouring to remove the injury occasioned by the salt water *(n)*. And in another case that will be mentioned hereafter, the merchant was held liable to pay the freight of tobacco saved from shipwreck, and accepted by him, although part was so much damaged as to be of no value *(o)*.

Upon this question as to the right of the merchant to abandon his goods when brought to the place of destination, and by so doing to discharge himself from the freight, different doctrines and opinions have prevailed, and there is no judicial decision in our books: although in some cases between the merchant and his insurer, it has been admitted that

(m) Blanck v. *Solly and another*, 8 Taunton, 89. & 1 B. Moore, 531.

(n) Hotham & others v. *East India Comp.* Doug. 272. ante, ch. 1. of this part. sect. 14. p. 201.

(o) Lutwidge & another v. *Grey & others*, post. sect. 13. of this chapter.

that the freight was payable, notwithstanding the goods were so much damaged, that their value fell short of its amount(*p*). But it is necessary to distinguish the causes, from which the deterioration may have proceeded. If it have proceeded from the fault of the master or mariners, the merchant is entitled to a compensation; and may recover it by an action at law against the owners or master; but, if he has received the goods, he cannot insist upon the damage as a defence to an action brought against himself for the freight, even although he has offered to return them (*q*). And in general the right and true delivery of goods, upon which freight is made payable by the terms of a charter-party or bill of lading, means only a delivery of the entire quantity of chests or bales; if the goods have been damaged by the fault of the master or crew in the voyage, the remedy for the merchant, who has received them, is an action for the damage (*r*). On the other hand, if the deterioration have proceeded from an intrinsic principle of decay naturally inherent in the commodity itself, whether active in every situation, or only in the confinement and closeness of a ship; the merchant must bear the loss, as well as pay the freight; for the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event. And to this point there is a direct authority in the treatise called the *Guidon*. The author, having mentioned several cases of abandonment, as between the merchant and the insurer, goes on thus: "In

(*p*) *Boyfield* v. *Brown*, 2 Stra. 1065. and *Mason* v. *Skurry*, Park, 160. Marshall, 143.

(*q*) *Milles & others* v. *Bainbridge & others*, Guildhall, Dec. 20th, 1804, before Lord *Ellenborough*, Ch. J. His Lordship intimated, that if the merchants had refused to receive the cargo on the ground of damage so occasioned, the point would admit of some doubt. In such a case the merchant would derive no benefit whatever from the conveyance, nor would the master have fulfilled his engagement according to the terms of the bill of lading: *Quære*, therefore, whether the master could oblige the merchant to pay the freight? See *Basten* v. *Butter*, 7 East, 479.

(*r*) *Davidson* v. *Gwynne*, 12 East, 381. See also, *Shields* v. *Davis*, 4 Campbell, 119. and 6 Taun. 65.

" In like manner, the merchant cannot abandon the goods " hereinbefore mentioned (*viz.* fruit, salt, corn, victuals, " &c.) to the master of the ship for his freight, if the dete- " rioration has proceeded from natural decay; or from the " great diminution of price, that takes place at the end of " particular seasons, as in figs, grapes, and herrings after " Easter; or by reason of an overabundant supply of the " market, as in corn, wine, or salt; although in salt a dif- " ferent practice formerly prevailed, which is contrary to " reason, if the option has not been reserved by an express " clause in the charter-party" *(s)*.

In the very next article, however, of the treatise we find this doctrine: " If goods contained in casks, as wine, oil, " olives, molasses, and others of the like sort, have leaked " to such an extent, that the casks are empty, or nearly " empty, the merchant may abandon them for the freight, " before they are landed. Therefore masters should take " care when they receive casks, to see that they be well " hooped, and in good condition. It is true, that if by " tempest the casks have been so pressed that they have " thrown out their bottoms, have been beaten in, and burst, " provided there have been no fault in the stowage, the " loss shall be an average against the insurers, the master " shall lose his freight" *(t)*.

From the words of this article it appears very clearly, that in the opinion of the author, the merchant might abandon articles of this description, although the leakage were not occasioned by perils of the sea.

In the work of *Molloy (u)*, however, we find the following clauses: " If freight be taken for 100 tons of wine, and " twenty of them leak out, so that there is not above eight " inches from the buge upwards, yet the freight becomes " due: one reason is, because from that guage the King " becomes

(s) *Guidon*, chap. 7. art. 10.
(t) *Guidon*, chap. 7 art. 11.
(u) Book 2. c. 4. sect. 14. The author cites *Boyce* v. *Cole*, Hil. Ter. 26 & 27 *Car.* 2. in K. B. But I do not find that case reported elsewhere.

" becomes entitled to custom; but if they be under eight " inches, by some it is conceived to be then in the elec- " tion of the freighters to fling them up to the master for " freight, and the merchant is discharged. But most con- " ceive otherwise; for if all had leaked out (if there was " no fault in the master), there is no reason the ship should " lose her freight, for the freight arises from the tonnage " taken; and if the leakage was occasioned through the " storm, the same perhaps may come into an average. Be- " sides, in *Bourdeaux (x)*, the master stows not the goods, " but the particular officers appointed for that purpose, *quod* " *notà*. Perhaps a special convention may alter the case."

The *French* Ordinance declares: " That the merchant " shall not oblige the master to take for his freight, goods " diminished in price, spoilt, or deteriorated, by their own " vice, or by peril of the sea *(y)*." And the very next article is as follows: " If goods put into casks, as wine, oil, " honey, or other liquors, have leaked out to such an ex- " tent, that the casks are empty, or nearly empty, the mer- " chant may abandon them for the freight." *Valin*, in his commentary on this last article, observes, that it is taken from the article of the *Guidon*, which I have just before quoted. He observes also, that by the *Consolato del mare*, chap. 202, the contrary is decided: yet that by another article of the same code, chap. 234, freight is not due for pottery, unless it be found entire at the end of the voyage *(z)*, and he considers this article of the Ordinance, to give the right of abandonment to the merchant, in the case of leakage happening as well from the fault of the casks as from the perils of the sea, and to be an exception to the general

(x) See *Cleirac* on the 11th art. of the laws of *Oleron*.

(y) *French Ordinance*, liv. 3. tit. 3. *Fret*. art. 25 & 26. Those articles are repeated in the *Code de Commerce*, art. 310.

(z) The sense of this chapter appears not to be correctly stated by by the learned commentator: The rule therein laid down is, that if the merchant stows the pottery he must pay the freight of what is broken; but if the master stows it, he is at all events to lose the freight of what is broken; and if there has been any fault in the stowage or carriage, he must also make good the damage.

general rule laid down in the article immediately preceding. On the other hand his countryman *Pothier*, controverts this opinion, and contends that the article of the Ordinance is to be confined to the case of leakage occasioned by peril of the sea; in which case he considers the real commodity, *viz.* the contents of the casks, to be absolutely lost, as much as if they had been washed overboard. "This opinion of "*Monsieur Valin*," says he, "appears to me to be contrary "to principles. It is the fault of the merchant, if he has "put his goods into bad casks: It is *his* fault if they have "leaked out, and have not arrived at the place of des- "tination; he therefore ought to pay the freight; for ac- "cording to the principles of the contract of hiring, the "hirer, who by his own act or fault has not enjoyed the "thing let to him, ought to pay the hire, as if he had "enjoyed it. If the letter, who has been prevented from "letting to other persons the part of his vessel occupied "by the bad casks, should not be paid the freight, he would "suffer for the fault of the hirer; which is unjust *(a)*."

This argument of *Pothier* may show what *ought* to have been established by the Ordinance, but it by no means proves that the interpretation given by *Valin*, and which agrees with the terms of the *Guidon*, is not the true interpretation. The rule was probably introduced in early times, to prevent disputes and litigation; and adopted by the framers of the *French* Ordinance for the same reason *(b)*.

In our *West-India* trade, the freight of sugar and molasses is regulated by the weight of the casks at the port of delivery here, which in fact is, in every instance less than the weight at the time of the shipment, and therefore the loss of freight occasioned by the leakage necessarily falls upon the owners of the ship by the nature of the contract.

Upon

(a) Traité de Charte-Partie, num. 60.

(b) The Ordinance of *Rotterdam* on this subject seems to agree with the *general* rule of the *French* Ordinance. It declares that when the goods are arrived at the intended place, the merchant is obliged to pay the freight of what happens to be damaged or diminished without any fault of the master or ship's crew. *Art.* 155. 2 *Magens*, 105.

Upon the propriety also of the rule laid down in the preceding article of this Ordinance, namely, that which prohibits abandonment generally, these two learned foreigners have differed in opinion, "It must be agreed," says *Valin*, "that this rule is too rigorous to be compatible with equity. "The natural idea, that the mind forms of the agreement "for freight, is, that it has for its object that the goods "shipped in pursuance of it shall be the only pledge for "the freight, and consequently that upon the same goods "alone can the payment of the freight be enforced. From "whence it follows, that in every case *(en quelque cas que "ce soit)* the merchant ought to be quit of the freight by "abandoning his goods. This is also the opinion of *Casa "Regis, Disc.* 22. n. 46. and *Disc.* 23. n. 86. and 87. In "the case of *shipwreck* it is decided by the Ordinance, "that the freight is not due when the goods are lost; now, "when the goods are so injured by the shipwreck, that he, "to whom they belong, cannot derive from them wherewith "to pay the freight, is it not the same to him as if they had "been wholly lost by the mere act of shipwreck? If then "he had not the power of abandoning the goods to dis-"charge himself from the payment of the freight, his con-"dition would be worse than if all had perished without "resource, and this is what natural equity will not allow "him to suffer." The learned commentator then proceeds to acquaint us, that a practice prevailed in his country, of not compelling the merchant to reclaim shipwrecked goods, and that unless he reclaimed them, the master was never known to obtain the payment of the freight. On the other hand *Pothier (c)*, speaking of this article of the Ordinance of his country, says, "This rule, notwithstanding what is "said of it by Monsieur *Valin*, is just, and conformable to "the principles of the contract of letting to hire. It is "sufficient, according to these principles, to make the "whole hire due to the letter, that he has wholly performed "the

(c) *Charte-Partie*, num. 59.

" the obligation, which he contracted, to give to the hirer " the enjoyment of the thing let to hire: now the master " having transported the goods to their place of destination, " it may be truly said, that he has wholly fulfilled his " obligation, and that he has given to the merchant the " enjoyment of the ship for the use, for which he had let it " to him, since this transport was the only use, for which " they contracted. If the goods are found greatly da- " maged and of no value, this is a matter that does not " concern the master, because it is by an accident, against " which he does not warrant, that they are reduced to this " condition. The point of Monsieur *Valin*'s objection," proceeds he, " is, that it is the same thing to the merchant, " whether the goods are absolutely lost or become of no " value. The answer is, that it is on the side of the master, " that we ought to consider whether this is the same thing: " now it is evident that this is not the same thing to the " master. For when the goods are lost on the way, not " having been able to transport them to the place of " destination, he has not fulfilled the object of his contract, " *munere vehendi functus non est:* and it is for this reason " that the freight is not due to him: but when he has " transported them, however injured they may be found, " he has fulfilled the object of his contract, *munere vehendi* " *functus est*, and by consequence the freight is due to " him *(d)*."

In addition to this answer given by *Pothier* it may be proper also to observe, that the argument of *Valin* seems to prove too much; for if the goods are to be the only security for the freight, and the merchant ought not to pay the freight, if they are not worth the amount of it, the master and owners must lose the freight, if the goods happen from any accident to come to a bad market; which is contrary to all law and reason: and further, that the foundation of the argument does not apply to this country, by the law of which

(d) Pothier Charte-Partie, num. 59.

which, although the goods are pledged for the freight, yet the merchant also is personally responsible for it.

8. I have detailed the opinions of these learned foreigners thus at length, because they appear to me to comprise the whole argument on both sides of the question, which, as I have before observed, has not received a judicial decision in this country. It is true indeed, that Lord *Mansfield* in a case, that will be more fully stated hereafter, delivered himself to the following effect: "As to the value of the "goods it is nothing to the master, whether the goods are "spoiled or not, provided the merchant takes them; it is "enough if the master has carried them; for by doing so, "he has earned his freight; and the merchant shall be "obliged to take all that are saved, or none; he shall not "take some, and abandon the rest, and so pick and choose "what he likes, taking that which is not damaged, and "leaving that which is spoiled or damaged. If he "abandons he is excused freight, and he may abandon all, "though they are not all lost." But it is to be observed, that the question of abandonment was not the point in issue in that cause; and in fact in that case the goods had *not* been carried to the place of destination, but the vessel, which was bound for *Lisbon*, had been captured and recaptured, and was carried with the goods into a port in *Devonshire*, where the merchant received them: and therefore if Lord *Mansfield* is to be understood to speak with reference to the case then before him, the sentiments delivered by him on that occasion, cannot be considered as furnishing an authority for the decision of the question in the case of goods actually carried to the place of destination. It is true also, that in the case of *Lutwidge* v. *Grey & others*, which will be fully cited for another purpose in the subsequent part of this chapter *(e)*, it seems to have been taken for granted, by the counsel on both sides, that the merchants might have abandoned the whole cargo: but in that

(e) Sect. 13. p. 307.

that case the ship was wrecked, and the goods saved at a great expence, at a place short of the port of delivery, and the right of abandonment is spoken of with reference to the situation of the goods at that place. Most certainly the merchant cannot be compelled to accept his goods at any other place than the place of destination: even if the master should pay the salvage, and convey them to that place, the merchant may be allowed to have his option of accepting them or not, loaded with the additional expence of salvage. And accordingly in another case, Lord *Mansfield* said, "The owner of the ship has a lien for freight, but in "a total loss, literally so called, no freight is due; in "case of a loss, total in its nature, with salvage, the mer-"chant may either take the part saved, or abandon *(f)*." The only point intended to be proposed by me as doubtful, is the right to abandon for the freight alone, at the port of destination: and in point of practice, I have been informed that this right is never claimed in this country.

Bullion and specie have been sometimes sent from abroad to this country by merchants, in ships belonging to his Majesty, for which a remuneration was paid by the merchant. Questions have arisen as to the distribution of this money among officers of the King's ships, but as those questions do not seem to belong to this Treatise, I shall merely refer to the names of the cases in a note *(g)*.

9. Having thus considered the cases, in which the entire freight is to be paid according to the agreement, I now proceed to the consideration of those, in which *a part* only of the stipulated sum may be claimed. And these are, *first*, when the ship has performed the whole voyage, but has brought a part only of the merchant's goods in safety to the place of destination: And, *secondly*, when the ship has not performed the whole voyage, but the master has delivered

(f) *Baillie* v. *Moudigliani*, Park, chap. 2. p. 70.

(g) *Montagu* v. *Janverin*, 3 Taunton, 442. *Brisbane*, Knt. v. *Dacres*, widow, executrix of Admiral *Dacres*, 5 Taunton, 143. *Warren* v. *Shirreff*, 5 M. & S. 32.

delivered the goods to the merchant, at a place short of the port of destination. In the case of a general ship, or of a ship chartered for freight to be paid according to the quantity of the goods, there can be no doubt that freight is due for so much as shall be delivered. The contract in these cases being distinct, or at least divisible in its own nature. But suppose a ship chartered at a specific sum for the voyage, without relation to the quantity of the goods, (in which case the contract, as observed by Lord Chancellor *Hardwicke (h)*, is more properly a contract for the use of the ship, than for the conveyance of the merchandize,) should lose part of her cargo by a peril of the sea, but convey the residue to the place of destination; in this case I do not find any authority for apportioning the freight. And it seems to have been the opinion of *Malyne (i)* that nothing would be due; and the case of *Bright* v. *Cowper*, which will be mentioned hereafter *(k)*, may be considered as an authority in support of that opinion. But probably if the question should arise again, the determination of it would depend upon the particular words of the charter-party; for without a very precise agreement for that purpose, it seems hard that the owners should lose the whole benefit of the voyage, where the object of it has been in part performed, and no blame is imputable to them.

9. *b.* I have observed that where by the terms of a charter-party the freight is made payable according to the quantity of goods, the merchant must pay for so much as shall be delivered. This observation is supported by the following case, which has been already quoted on another point *(l)*. The ship *True Briton* was chartered for a voyage from *Shields* to *Hamburgh*. The master engaged to take a full cargo of coals, and to proceed to *Hamburgh*, and on his arrival to deliver the same to the merchant or his assigns,

(h) In the case of *Paul* v. *Birch*, 2 Atkins 621, ante, ch. 1 of this part, sect. 7. page 171.

(i) *Malyne's Lex. Mercat*, p. 100.

(k) Sect. 17 of this chapter, page 319.

(l) See before sect. 4. of this chapter, page 283.

assigns, at such convenient place or places where the ship and cargo might safely come, and for the delivery to lie at the rate of one working day per keel of coals; the merchant engaged to load the cargo, and also to receive it at *Hamburgh* within the time limited, and to pay in full for the freight of the ship for the voyage at the rate of 20 *l.* per keel on delivery of the cargo, with two-third parts of the pilotage and port-charges. Under this charter-party the merchant loaded *seventeen* keels of coals, with which the ship proceeded towards *Hamburgh*, and arrived at *Cuxhaven*, so near to *Hamburgh* that the voyage might have been completed in the course of the day, but the master being ordered by the commander of his Majesty's ships on that station to proceed no further, because the French forces were approaching *Hamburgh*, sent notice of his arrival to the merchant's correspondents at *Hamburgh*, who desired him to sail as far as *Gluckstadt*, where they would send him lighters: the master accordingly sailed to *Gluckstadt*, and there delivered *seven* keels and one chaldron of coals into the lighters that were sent: the delivery was at the rate of one keel per working day: the ship staid long enough to have delivered the whole quantity if lighters had been sent to receive it. On the *ninth* day the master returned to *Cuxhaven* by order of the *British* Consul and of the commander of his Majesty's ships, the *French* having entered *Hamburgh*, and shortly afterwards, by the order of the same persons, sailed away with the residue of his cargo, and brought it back to *Shields:* having remained in the whole *fifteen* days only from his first arrival in *Cuxhaven* roads, being less than the time stipulated in the charter-party. This however contained the usual exception of perils of the seas and restraint of princes and rulers. And the master having by this restraint been prevented from delivering his whole cargo, was held entitled to the rateable freight for the quantity delivered, and also to the two-third parts of the pilotage and port-charges *(m)*.

10. The

(m) Christy v. *Row*, 1 Taunton, 300.

10. The apportionment of freight usually happens, when the ship by reason of any disaster goes into a port short of the place of destination, and is unable to prosecute and complete the voyage. In this case we have already seen that the master may, if he will and can do so, hire another ship to convey the goods, and so entitle himself to his whole freight: but if he is unable, or if he declines to do this, and the goods are there received by the merchant, the general rule of the ancient maritime law is, that freight shall be paid according to the proportion of the voyage performed, *pro ratâ itineris peracti (n)*.

Some writers *(o)* have endeavoured to trace this rule to the *Digest of Justinian*, but the passages referred to by them, do not appear to contain such a regulation. The rule however is without doubt extremely ancient. It is to be found in the collection called the *Rhodian Laws (p)*, but which collection is now generally agreed to be of a later date than the time of *Justinian (q)*; and also in the *Consolato del mare (r)*. The rule as laid down in the laws of *Oleron (s)*, is to the following effect. If a ship depart with a cargo from *Bourdeaux*, or other place, and it happens that the ship is disabled, and as much of the cargo is saved as possible, the merchants and master enter into a great debate, and the merchants demand to have their goods of the master, they may have them, upon paying freight for so much of the voyage as the ship has advanced rateably and in proportion, if the master pleases; but if the master will, he may repair his ship, if he can do it speedily, and if not, he

(n) The Ordinance of *Rotterdam* differs in this respect from the general rule; for it allows the merchant to take his goods, paying a reasonable portion of the freight, in case the ship *may* be repaired in a short time, art. 147. 2 *Magens*, 104.

(o) *Roccus*, not. 81.

(p) Per Lord *Mansfield* in *Luke* v. *Lyde*, 2 Burr. 889.

(q) *Schomberg*'s dissertation on these laws. The only rule that can be distinctly and authoritatively traced to the institutions of *Rhodes*, is the law *de Jactu*, quoted and adopted in the *Dig.* 14. 2. 1. See the *eighth* chapter of this part, sect. 2.

(r) Per Lord *Mansfield* in *Luke* v. *Lyde*, 2 Burr. 889. alluding probably to chap. 193.

(s) Art. 4. and see Ordin. of *Wisbuy*, art. 16. 37.

he may hire another ship to complete the voyage, and shall have his freight of the goods, to be reckoned according to their proportion to the whole cargo: and the goods shall pay the costs of their salvage. The rule is also to be found in *Roccus* (*t*), (who cites several more ancient authors in support of it), and all the subsequent writers on maritime law: and is adopted in most of the foreign ordinances, particularly in the *French* Ordinance (*u*); which declares, that "The master shall be paid the freight of goods saved "from shipwreck, if he conveys them to the place of des- "tination. If he cannot find a vessel to convey the goods "saved, he shall be paid freight in proportion only to the "voyage performed." So, "if the master be obliged to "repair his vessel during the voyage, the merchant must "wait, or pay the entire freight; and in case the vessel "cannot be repaired, the master shall be obliged forth- "with to hire another; and if he cannot find one, he shall "be paid freight in the proportion only of what the voyage "shall be advanced" (*x*). These obligatory words are said to mean only that the master must hire another ship *if he will gain his whole freight* (*y*). But in the case of interdiction of commerce and return of the ship, this Ordinance prescribes a different rule, which I have before noticed; "If there happen a prohibition of commerce with the "country to which the ship is sailing, and the master be "obliged to return with his cargo, the outward freight "alone shall be due to the master, although the ship be "freighted out and home" (*z*).

11. With regard to capture and ransom, the author of the *Guidon*, speaking of the case where the goods only are taken by pirates and the ship discharged, and the goods are afterwards ransomed, says, that "If the master will not "contribute to the ransom, he shall lose his whole freight; "but

(*t*) *Loc. sup. cit.*

(*u*) Liv. 3. tit. 3. *Fret.* art. 21 and 22. And *Code de Com.* art. 303. as to payment to the place of shipwreck.

(*x*) Same Title, art. 11. and *Code de Com.* art. 296.

(*y*) *Valin* on the article.

(*z*) Same Title, art. 15. and *Code de Com.* art. 299.

" but if he contributes, he shall be paid freight as far as " the place of the capture, as well in the case of affreight- " ment by charter-party, as otherwise: and if he furnishes " another ship, to relade the goods, he shall be paid his " whole freight" (*y b*). Upon this subject the *French* Ordinance provides, " that if the ship and goods are ransomed, " the master shall be paid his freight as far as the place of " capture, even his whole freight, if he conveys the goods " to the place of destination, he contributing to the ran- " som" (*z b*).—Although ransom is now prohibited by the law of *England*, yet this doctrine may apply to the case of capture and recapture: and accordingly in an action brought by a seaman for his wages, in the case of a ship taken and retaken, and which reached the port of destination (*a*), Lord *Eldon*, before whom the cause was tried, held that the wages were payable, because, said his Lordship, " *the ship on her* " *arrival was entitled to freight*" (*b*).

12. Upon this subject of the apportionment of freight, *Malyne* says, ". If the ship in her voyage become unable " without the master's fault, or that the master or ship be " arrested by some authority of magistrates in her way, the " master may either mend his ship, or freight another. " But in case the merchant agree not thereunto, then the " master shall at least recover his freight, so far as he " hath deserved it" (*c*). The same author also mentions the following case: A merchant took a ship to freight, and put in the master and mariners, and victualled the ship at his own expence, and by a charter-party engaged to pay the owner for the use of the ship and furniture 20*l*. every month, at her return into the river *Thames*. The merchant laded the ship for the *Streights*, and to go from port to port and to several places with merchandize; and after about

(*y b*) *Guidon*, chap. 6. art. 7.

(*z b*) Liv. 3. tit. 3. *Fret.* art. 19. and *Code de Com.* Art. 303.

(*a*) *Bergstrom* v. *Mills*, West. Sit. in Mich. Term, 40 *Geo.* 3. 3 Espin. N. P. cases, p. 36.

(*b*) See before sect. 1. of this chapter.

(*c*) *Malyne*, p. 98.

about two years, the ship, having taken in a cargo at *Barbary*, was, on her return to *London*, cast away by tempest near *Dover*; and the goods were saved: the merchant refused to pay the freight, because the ship did not arrive in the river *Thames*, according to the words of the charter-party: "Herein," says the author, "the owner was much "wronged, for the money is due monthly, and the place "was named only to signify the time when the money "was due to be paid;" but he does not inform us whether the question was ever brought before a court of justice, or whether or no the merchant finally paid any part of the freight *(d)*. His opinion, however, is confirmed by the following case.

12. *b.* The ship Lord *Duncan* was let to freight for twelve calendar months certain, from the 24th Sept. 1806, and from thence for such longer period, if any, as the merchants should detain her; the ship to be under their entire control, so far as related to all orders for sailing, destination and delay. The merchants covenanted to pay for the hire and service of the ship for the twelve months, and such longer time as they should keep her, the freight and rate following; *viz.* twenty-four shillings per calendar month per ton, being 1,119*l.* 12*s.* per month, commencing from the before-mentioned day, and ending *when the ship should be returned to the river* THAMES, *and thereby the freighters be declared to be discharged*; it being understood that they should not be at liberty to discharge the ship at any other place but within the port of *London*: the freight to be paid in the proportions, and at the periods following; *viz.* two months at the execution of the charter-party; two months more at the end of six calendar months from the said 24th of September; two months more at the end of ten calendar months; two months more at the end of fourteen calendar months, should the ship be so long employed; and in like manner two months more at the end of every succeeding two

(*d*) *Malyne*, p. 101.

two calendar months *until the ship should be discharged, and immediately upon such discharge* the balance to be paid. The ship was taken into the employ of the merchants, and *between ten and twelve months* from the said 24th of September was destroyed at *Saint Domingo* by an accidental fire. The merchants contended that the right to the portions of freight depended upon the safety of the ship at the particular times at which they were made payable, so that the loss of the ship at the time before-mentioned confined the claim of the owner to six months, for which period he had been paid. But the Court of King's Bench decided that the times fixed for the actual payment were to be considered only as postponing for the merchant's convenience, the actual payment of sums then due, to a future period; not as creating a contingency whether they should ever be paid at all; and that each month's freight was earned and became completely due at the end of each month, the actual payment only being postponed *(e)*. The distinctions between this case and that of *Smith* v. *Wilson*, (which will be mentioned hereafter *(f)*, both as to the terms of the contract and the subsequent events, will be obvious to the reader.

13. This rule of maritime law, which directs the payment of freight according to the portion of the voyage performed *pro ratâ itineris peracti*, is open to much observation, and to many difficulties. I have been able to collect upon it only the following decisions of *English* courts.

Lutwidge, the owner of a ship called the *Wharton*, of *Whitehaven*, let his ship by a charter-party to *Archibald Grey* and others, merchants at *Glascow*, for a voyage from *Glascow* to *Maryland* or *Virginia*, and back from thence to *Glascow*, and was to receive freight from them for the homeward cargo only, at the rate of 8*l.* 12*s.* per ton of tobacco, computing four hogsheads to the ton; one half to

(*e*) *Havelock* v. *Geddes and others*, 10 East, 555. See before chap. 1. of this part sect. 11. *d.* page 190.

(*f*) See the last section of this chapter.

to be paid immediately after the ship's discharge at *Glascow*, and the other half within six months after such discharge. The ship sailed to *Virginia*, and there delivered her outward cargo, and took on board from the merchant's factor a cargo of tobacco consisting of 199 hogsheads, part of which was their property, the residue belonged to other persons, and was put on board by the factor to complete the lading, in pursuance of directions given to him for that purpose by his principals, in case the outward cargo should not enable him to purchase a full lading on their account. *Grey & Co.* insured their part of the cargo with persons living at *Bristol*, the other part was not insured. On the return homeward, the ship was unfortunately cast away at *Youghall* in *Ireland*, which is within a very short distance of *Glascow*, and part of the cargo, to the amount of 163 hogsheads was saved by the assistance of the officers of the customs at *Youghall*, and deposited in the Custom-house there. *Lutwidge* the owner, as soon as he knew of the misfortune, informed *Grey & Co.* of it, and told them he should provide another ship to transport the tobacco which was saved. *Grey & Co.* abandoned their part of the cargo to their insurers, and indorsed over the bills of lading to them. *Lutwidge* provided another ship at *Youghall*, but the insurers took the part of the cargo abandoned to them, and conveyed it to *Bristol*. The agent of the proprietors of the other part of the cargo was willing to have laded it on board the ship thus provided, if the master thereof would sign bills of lading to deliver it at *Glascow*, in conformity with the original charter-party; but the master refused to give such bills of lading, or to oblige himself to deliver it at *Glascow*, offering only to give receipts obliging himself to deliver it in *Great Britain*. And the agent suspecting that he meant to take it to *Whitehaven*, and not to *Glascow*, refused to deliver it to him upon those terms, and sent it by another vessel to *Glascow*, where several hogsheads were found so much damaged, that they were not entered at the Custom-house, but burned at the king's

king s scales there. *Lutwidge* brought an action against *Grey & others*, for his freight according to the charter-party, in the Court of Admiralty in *Scotland*. On their part it was insisted, that the contract of affreightment was dissolved by the shipwreck, and that there remained only a demand in equity for freight; that the demand could not be made against *them*, who had not taken the goods into their possession, but must be made, for part against the insurers at *Bristol*, and for the residue against the proprietors of that residue; that this demand could only be in proportion to the value of the goods saved, after deduction of salvage and charges; and that at all events it could only be for the proportion of the voyage to *Youghall*, because the master of the ship refused to sign bills of lading, and engage to deliver the tobacco at *Glascow*. The Judge of the Court of Admiralty decreed, that the full freight was due from *Grey & Co.* for the part of the cargo saved, but none for the part lost, and that the full freight was due, although the goods were not carried to *Glascow*, because *Lutwidge* had another ship ready to transport them thither, and there was no occasion for any new bills of lading, while the former bills of lading subsisted. From this judgment, *Grey & Co.* appealed to the Lords of Session in *Scotland*, who by their interlocutor decreed, "That "the contract of affreightment was dissolved by the total "loss of the ship, albeit some of the shipwreck goods were "saved out of the shipwreck; and found that the freighters "indorsing the bills of lading to the insurers, did not "subject the freighters to any freight for the goods reco-"vered by the insurers, but found the merchants liable to "the freight *pro ratâ itineris* of such of the goods as were "brought to *Glascow*, notwithstanding some of the to-"bacco was found damnified, and burned there." This decree or interlocutor was, upon the petition of *Lutwidge*, reviewed by the Lords of Session, but affirmed by them. Hereupon *Lutwidge* appealed to the highest tribunal of the country, the *British House of Lords:* the House of Lords

" Reversed the decree or interlocutor of the Lords of " Session, complained of by the appellant, and the affirm- " ance of that interlocutor; and declared, that the re- " spondents, *Grey & others*, were liable for the full freight " of such of the goods as were given up to the insurers, " and for the freight *pro ratâ itineris* of such of the goods " as were brought to *Glascow*, notwithstanding some of " the tobacco were found damnified and burned there "(g).

14. The next case on this subject was decided in the Court of King's Bench, and occurred soon after Lord *Mansfield* presided in that Court. The cause had been tried before his Lordship in the country, and he appears to have paid peculiar attention to the decision. " I was desirous," said his Lordship, " to have the point reserved for the opinion " of the Court, in order to settle it more deliberately, so- " lemnly and notoriously; as it is of so extensive a nature, " and especially as the maritime law is not the law of a " particular country, but the general law of nations: non " erit alia lex Romæ, alia Athenis; alia nunc, alia posthac; " sed et apud omnes gentes et omni tempore una eademque " lex obtinebit." The facts of the case were these: *Lyde* shipped a cargo of 1,501 quintals of fish at *Newfoundland*, on board the ship *Sarah*, belonging to *Luke & others*, to be carried to *Lisbon:* the freight was to be at the rate of *two shillings* per quintal. The price of the cargo at *Newfoundland* was *ten shillings and sixpence* per quintal. *Luke & others* also had on board a quantity of fish, their own property. The ship set sail on the 27th *November* 1756, and having proceeded *seventeen* days on her voyage, was taken on the 14th of *December*, by a *French* ship, within *four* days sail of *Lisbon*, but retaken on the 17th of *December* by an *English* privateer,

(g) *Lutwidge & another* v. *Grey & others*, determined in the House of Lords, 23 *February* 1733. The account here given is taken from the printed cases delivered by both parties to the House of Lords. The judgment of the House of Lords will be found in the printed Journals of the year, p. 356. The case is cited in the case of *Luke* v. *Lyde*, both at the bar and by Lord *Mansfield*, who was one of the counsel for the appellants.

privateer, and brought on the 29th into the port of *Biddeford*, in *Devonshire*. The *French* ship took out the master and all the crew, except one man and a boy. *Lyde took his goods of the recaptors*, and paid *five shillings* per quintal salvage, the value of the fish being then estimated at *ten shillings* per quintal. The fish could not be sold at all at *Biddeford*, nor at any other port in *England*, for more than *ten shillings* per quintal, clear of charges and expences; and it was supposed by every person that the fish would be disposed of to the greatest advantage at *Bilboa*, in *Spain*, to which place *Lyde* sent it without delay; but it fetched there only *five shillings and sixpence* per quintal, clear of freight and expences, being little more than one-third of the prime cost and salvage. *The freight from Biddeford to Lisbon was higher than from Newfoundland to Lisbon.* The owners, *Luke & others*, abandoned the ship to their insurers, and *never offered* to convey the goods to *Lisbon, nor were ever required* to do so by *Lyde*, the merchant. In an action brought by the owners, *Luke & others*, for freight, the Court decided, that they should recover freight, as for half the quantity of the cargo shipped, considering the other half to be absolutely lost by the expence of salvage, and in the proportion of *seventeen* days, during which the ship had proceeded on the voyage, to *twenty-one* days, within which the voyage would have been completed, if the capture had not happened, that is 60*l.* 14*s.* being $\frac{17}{21}$ of 75*l.* the half of 150*l.* And Lord *Mansfield* said, "If a freighted ship be-
"comes accidentally disabled on its voyage, without the
"fault of the master, the master has his option of two
"things: either to refit it, (if that can be done within con-
"venient time,) or to hire another ship to carry the goods
"to the port of delivery. If the merchant disagrees to this,
"and will not let him do so, the master will be entitled to
"the *whole* freight of the *full* voyage; and so it was de-
"termined in the House of Lords, in the case of *Lutwidge*
"*& How* v. *Grey et al.* As to the value of the goods, it is
"nothing to the master of the ship, whether the goods are

" spoiled or not, provided the freighter takes them; it is " enough if the master has carried them; for by doing so, " he has earned his freight; and the merchant shall be " obliged to take all that are saved, or none; he shall not " take some and abandon the rest, and so pick and choose " what he likes, taking that which is not damaged, and " leaving that which is spoiled or damaged. If he aban- " don *all*, he is excused freight; and he may abandon *all*, " though they are not *all* lost. (I call the freighter the " merchant, and the other the master, for the clearer dis- " tinction.) Now, here is a capture without any fault of " the master, and then a recapture; *the merchant does not* " *abandon, but takes the goods, and does not require the master* " *to carry them to Lisbon, the port of delivery.* Indeed, the " master could not carry them in the same ship, for it was " disabled, and was itself abandoned to the insurers of it; " and he would not desire to find another, because the " freight was higher from *Biddeford* to *Lisbon*, than from " *Newfoundland* to *Lisbon*. There can be no doubt but " that *some* freight is due; for the goods were not abandon- " ed by the freighter, but received by him of the recaptor. " The question will be, *what* freight? The answer is, a " *rateable* freight; *i. e. pro ratâ itineris.*"

" If the master has his election to provide another ship " to carry the goods to the port of delivery, and the mer- " chant does not even desire him to do so, the master is still " entitled to a proportion, *pro ratâ*, of the former part of " the voyage. I take the proportion of the salvage here, " to be half of the whole cargo upon the state of the case, " as here agreed upon. And it is reasonable that the half " here paid to the re-captor should be considered as *lost*. " For the re-captor was not obliged to agree to a valuation, " but he might have had the goods actually sold, if he had " so pleased, and taken half the produce, and therefore the " half of them are as much lost as if they remained in the " enemy's hands. So that half of the goods must be con- " sidered as *lost*, and half as *saved*. Here the master had

" come

" come *seventeen* days of his voyage, and was within *four* " days of the destined port when the accident happened. " Therefore, he ought to be paid his freight for $\frac{17}{21}$ parts of " the full voyage, for that half of the cargo which was " saved." His Lordship then proceeds to cite most of the authorities that I have already quoted on this subject, and concludes thus: " It is quite immaterial what the merchant " made of the goods afterwards, for the master hath no- " thing at all to do with the goodness or badness of the " market; nor indeed can that be properly known, till " after the freight is paid; for the master is not bound to " deliver the goods till after he is paid his freight. No " sort of notice was taken of that matter in the case of " *Lutwidge & How* v. *Grey*, in the House of Lords; and " yet there the tobacco was damaged, very greatly, even " so much, that a great part of it was burnt at the scales " at *Glascow*" (*h.*)

15. In a subsequent case, a ship sailed with goods from *Nevis* for *Bristol*, but on the voyage was taken and carried into *France*, and condemned there. On appeal the sentence of condemnation was reversed, and restitution awarded, but before that time the ship and cargo was sold. The merchants received the price of the goods, and paid freight to the master *pro ratâ itineris:* and, having caused the goods to be insured before the commencement of the voyage, brought an action against the insurers to recover from them the freight so paid to the master. The Court held that this payment could not be recovered upon this insurance. But Lord *Mansfield* said, " As between the " owners of the ship and cargo in case of a total loss no " freight is due, but as between them no loss is total, " where part of the property is saved, and the merchant " takes it to his own use. In this case the value of the " goods was restored in money, which is the same as the " goods,

(*h*) *Luke & another* v. *Lyde*, 2 Burr. 882. and 1 Black. Rep. 190.

" goods, *and therefore freight was certainly due pro ratâ* " *itineris*" *(i)*.

So where a ship under a neutral flag, and with neutral papers, was in time of war driven into a *British* port by stress of weather, and seized together with the cargo, and libelled in the Court of Admiralty for condemnation, on account of various circumstances, which led to a suspicion that both ship and cargo were the real property of the enemy: and the neutrality of the cargo being proved before proof of the neutrality of the ship arrived, the cargo was restored during the detention of the ship, and part thereof was sent in other vessels to the place of destination, and the residue conveyed to *London:* The present Judge of the Court of Admiralty, after having decreed the restoration of the ship, decreed also that the merchants should pay freight for their goods for the portion of the voyage performed *(k)*.

15. *b.* On the other hand, in the case of a *Swedish* ship, which, being chartered to go from *Plymouth* to *Radstow*, (a very small distance), there to take a cargo of pilchards for *Venice*, sailed to *Radstow*, and took in the cargo, and proceeded a few days on the voyage; but meeting with bad weather and becoming leaky, returned to *Falmouth*, and was there stopped by an embargo imposed on the vessels of *Sweden*, in consequence whereof the cargo was taken out and restored to the merchants, who were *British* subjects; the learned Judge of the Court of Admiralty decreed *no* freight was due; but held that if any expences had been incurred by the ship on account of the cargo, they must be paid *(l)*.

16. Neither of the authors by whom the preceding case of *Luke* v. *Lyde* is reported, have mentioned the form of action adopted by the plaintiff *Luke* to enforce his demand. In

(i) Bailli.ev Moudigliani, Park, chap. 2. p. 70.

(k) The COPENHAGEN, *Mening*, 1 Rob. A. R. 289.

(l) The ISABELLA JACOBINA, *Sovergren*, 4 Rob. A. R. 77.

In a case since decided in the Court of King's Bench, it was understood to have been an action for freight for the carriage of goods generally, and not an action founded on the original contract for the conveyance of the goods from *Newfoundland* to *Lisbon*. And so it really was *(m)*. The case, to which I at present allude, is that of *Cook* v. *Jennings (n)*, which was *an action of covenant on a charter-party* of affreightment dated 2d *August* 1796, by which the plaintiff let his ship the *Resolution* to the defendant, to freight from *Liverpool* to *Wyburgh*, and back to *Liverpool*, and agreed that the master should take on board a cargo of salt for *Wyburgh*, and after delivering the same there, should take on board a cargo of deals; in consideration of which the defendant agreed to pay to the plaintiff, " in full for the freight and hire of the ship for the said " voyage, at and after the rate of 7 *l.* per standard hun- " dred for deals *delivered at Liverpool, &c.* the freight to " be paid one-fourth in cash at her arrival, and the re- " mainder by an acceptance on *London* at four months " date." The plaintiff in support of his action alleged, that the ship, after carrying the cargo of salt to *Wyburgh*, took on board there a cargo of deals, &c. and proceeded on her voyage for and towards *Liverpool, &c.*; and whilst the ship was so proceeding, and after she had performed a great part of her voyage, but before her arrival at *Liverpool*, the ship was, by the force and violence of the winds and waves, wrecked and cast upon the shore, and thereby became incapable of proceeding any further on the voyage, by reason whereof it became necessary to put the cargo of deals on shore for the preservation thereof, " which said " cargo so unladed the defendant accepted and received into

(m) I have examined the record, and find it be so. The issue is of Trinity Term, 32 & 33 *Geo.* 2 *Roll.* 379. The declaration is for the freight of goods carried in the plaintiff's ship by sea, without mentioning from or to what place.

(n) Cook v. *Jennings*, 7 Term. Rep. K. B. 381. The case came before the Court on a demurrer to the plea, which alleged that no part of the deals was delivered at *Liverpool* according to the charter-party.

" into his hands and possession, and sold and disposed of " the same to his own use, whereby he became liable to " pay to the plaintiff a proportionable part of the said " freight and hire of the ship for the carriage of the said " cargo of deals, for such part of the voyage from *Wyburgh* " to *Liverpool* as the ship performed;" which proportionable part amounted to the sum of 800 *l.*; and for the recovery of that sum the action was brought.

These facts were admitted to be true, and it was admitted that no part of the cargo was conveyed to *Liverpool*. The plaintiff did not pretend that he had offered to convey the deals thither, nor did the defendant assert that he had required him to do so. The Court of King's Bench decided that the plaintiff could recover nothing in the present action. Lord *Kenyon* said, " We are called upon to " decide in this action according to the rules of law, on " a contract between these parties, which was made in " the most solemn manner by a deed under seal; though " indeed I do not know that it would have made any dif- " ference, if the question had arisen on a precise formal " contract not under seal. By the terms of this agree- " ment the defendant engaged to pay so much on delivery " of the goods at *Liverpool*, one-fourth in cash on her " arrival, and the remainder by an acceptance at four " months: but the goods never arrived; then at what " time were those bills to be dated? We do not sit here to " make, but to enforce contracts: and the question put to " us is, whether the freight is to be paid under this con- " tract, though the ship never arrived, but was lost before " her arrival at *Liverpool*? upon which I cannot bring my " mind to doubt. The case of *Luke* v. *Lyde* is very dis- " tinguishable from the present, that being the case of " a general assumpsit for the freight of goods; in which " Lord *Mansfield* states the marine law on this subject. " But what has the case of an implied contract to do with " an express contract? Lord *Coke* says, *expressum facit* " *cessare tacitum*. Here the parties are bound by a precise

" agreement.

" agreement. Then it is suggested, that we ought not to " give effect to this contract, because it is unreasonable: " but we are to decide according to the contract of the " parties; and the law says, that if A. covenant to enfeoff " B. A. is not released from his covenant, though B. will " not accept livery of seizin, unless the act be frustrated " by the act of the covenantee. It is not necessary now " to determine whether or not the plaintiff might not have " brought an action of assumpsit; it will be time enough " to decide that case, whenever the question arises. But " here the question is, whether or not he can enforce pay- " ment of the money under this contract, not having car- " ried the goods to *Liverpool*, and the defendant having " only undertaken to pay on their delivery at *Liverpool*; " in answer to this action the defendant has a right to say, " *non hæc in fœdera veni.*"

The other Judges concurred in the same opinion; Mr. Justice *Grose* cited the case of *Bright* v. *Cowper*, as a direct authority against the plaintiff.

Mr. Justice *Lawrence* said: " I agree with the plaintiff's " counsel, that whether the contract be by parol or under " seal, the operation of the law on it is equally the same. " When a ship is driven on shore, it is the duty of the " master either to repair his ship, or to procure another; " and having performed the voyage, he is then entitled to " his freight: but he is not entitled to the whole freight, " unless he perform the whole voyage, except in cases " where the owner of the goods prevents him; *nor is he* " *entitled pro râta unless under a new agreement.* Perhaps " the subsequent receipt of these goods by the defendant " might have been evidence of a new contract between " the parties: but here the plaintiff has resorted to the " original agreement, under which the defendant only en- " gaged to pay in the event of the ship's arrival at *Liver-* " *pool.* That event has not happened, and therefore the " plaintiff cannot recover in this form of action." I pre-

sume

sume, the learned Judge, in thus speaking of the duty of the master, must be understood to have expressed himself with a view to the master's claim of his whole freight.

16. *b.* The next case upon this subject was an action brought for the recovery of freight or passage money against a person, who had embarked with his family and luggage in a ship bound from *Demerara* to *Flushing*, at a stipulated price for the voyage. The ship was taken by a *British* cruizer at the entrance of the channel, and was brought into *Plymouth*, and libelled in the Court of Admiralty as prize. The defendant and his family were set at liberty at *Plymouth*, and the luggage restored. The case of *Luke* v. *Lyde* was cited in support of the master's claim. The action was brought pending the proceedings in the Court of Admiralty, and upon that ground was decided against the master, because possibly the Court of Admiralty might order the defendant to pay to the captors; but the observations made by Mr. Justice *Le Blanc* upon the subject now under consideration deserve great attention. "It "is not necessary," said the learned Judge, "to give any "opinion upon the case of *Luke* v. *Lyde*, for as this case "now stands, the plaintiff cannot at any rate recover in "this action. Supposing this were a case for the freight "of goods only, which have been stopped in the course "of their voyage and carried to another place, then by "assimilating it to the case of *Luke* v. *Lyde*, the plaintiff "contends that he is entitled to recover *pro ratâ* for the "freight, not on the ground of the original contract, but "by reference to the marine law, on which the Courts have "shaped a course to recover for a benefit to the defendant, "which made part of the original contract. That was the "footing on which the case of *Luke* v. *Lyde* was put; "that though the master could not recover on the original "contract, which was not performed; yet that he might "recover on an implied assumpsit for a benefit already "conferred on the defendant; which in that case was implied

" plied from the acceptance of the goods by the defendant " at the port into which they were carried" *(o)*.

17. The case of *Bright* v. *Cowper (p)*, cited by Mr. Justice *Grose*, happened in the time of *James* the First, at a period, when mercantile causes or contracts had very seldom occupied the attention of *English* Courts of Justice. The report of it is in the following words: " Action of co- " venant brought upon a covenant made by the merchant " with a master of a ship, *videlicet*, that if he would bring " his freight to such a port, then he would pay him such " a sum, and shews that part of the goods were taken " away by pirates, and that the residue of the goods were " brought to the place appointed, and there unladed, and " that the merchant hath not paid, and so the covenant " broken; and the question was, whether the merchant " should pay the money agreed for, since all the merchan- " dizes were not brought to the place appointed? and the " Court was of opinion, that he ought not to pay the money, " because the agreement was not by him performed." Upon reading this report it is not quite clear what was the real question before the Court; but it seems that the plaintiff claimed his *whole* freight, to which it might very properly be decided that he was not entitled, as he had not performed the *whole* contract; if he claimed a part only of the freight, and was held by the Court not to be entitled to any thing, it may be, that by the particular terms of the contract, the payment of freight was made to depend upon the delivery of the entire cargo. *Molloy*, immediately after the citation of this case, adds the foliowing observation: " But by the Civil Law this is *vis major*, or *casus fortuitus*, " there being no default in the master or his mariners, and " the same is a danger or peril of the sea, which if not in " naval agreements expressed, yet is naturally implied: " for most certain had those goods, which the pirates car- " ried away, in stress of weather, *navis levandæ causa* been " thrown

(o) *Molloy* v. *Backer*, 5 East, 316. *(p)* 1 Brownlow, 21.

" thrown overboard, the same would not have made a dis-
" ability as to the receipt of the sum agreed on; for by
" both the common law and the law marine, the act of
" God, or that of an enemy, shall no ways work a wrong
" in actions private" *(q)*.

17. *b.* Upon a review of these cases it will appear, that considering the subject with regard to the proceedings in the Courts of Common Law of *England*, the right to freight *pro ratâ itineris* must arise out of some new contract between the master and the merchant, either expressly made by them, or to be inferred from their conduct. The right cannot possibly exist when the original contract has been performed, for then the master has another and more beneficial claim. Where an inference is to be drawn from the conduct of the parties, the rule of the maritime law will probably have great weight. But admitting this, still its true import and meaning may be questionable. In the case of *Luke* v. *Lyde* it appears to have been adopted by Lord *Mansfield ad literam;* to have been treated rather as a positive rule, laid down to prevent questions and discussions, than as a general principle of jurisprudence to be moulded and modified according to the circumstances of each particular case, that may fall within its operation. For it is obvious that the rule was there considered by his Lordship as a rule of space or time, and that the portion of the voyage performed was in his judgment the portion of sea that the ship had traversed, or the portion of time that had been expended in the voyage, compared with what might be required for its completion. Perhaps the measure of time was considered to furnish the measure of space, as distance is sometimes computed by the number of days journey. But it is obvious that such a mode of computation is very imperfect in its application to a journey

(q) Molloy, book 2. ch. 4. sect. 7. There is a case in 2 Moore, 397. and 8 Taunt 354. in which a question was raised respecting *pro ratâ* freight, but as the decision turned wholly on the construction of a particular agreement, it has not been noticed in this Treatise.

journey by sea, in which the advance depends so much upon the state of the elements. It is obvious also, that considered with reference to the interest of the merchant, the measure of time or space cannot reasonably be admitted as a general rule; for if a ship arrive within one day's sail of the place of destination, and be driven or carried back from thence to the place of lading, the merchant cannot possibly be benefited by this ineffectual advance. If the ship put into a port short of the place of destination, the benefit of the merchant must depend upon many contingencies, upon the opportunity of sale there, and the means of further transport. In the case of *Luke* v. *Lyde* the carriage of goods from the port, to which the ship was taken, to the place of destination, was higher than from the port of lading to that place. The rule was manifestly considered as applicable to the labour bestowed by the master, and not to the benefit received by the merchant; to the service performed; and not to the advantage derived from its performance. Whether the rule, so interpreted, be conformable to the principles of justice or equity may well be questioned. The meaning and interpretation of the rule became the subject of discussion in the Court of King's Bench in a more recent case, which I shall now mention, but under circumstances which did not lead to a decision on this point.

17. *c.* The ship *Young Nicholas* was chartered for a voyage from *Falmouth* to *Honduras*, to fetch a cargo of mahogany and other wood from thence to *London*: the freight to be calculated upon the quantity of wood, and to be paid, one-third upon a right and true delivery of the cargo, and two-thirds by a bill at three months date from such delivery. The adventure proved highly unfortunate. The ship took in her cargo, but encountered a storm, which compelled her to put into *Savannah*, in *Georgia*, to repair: and a part of the cargo was there sold to defray the expence. She sailed again from *Savannah*, but was taken by a *French* privateer, and carried towards *Guadaloupe*; she was retaken near that island by a *British* sloop of war, and sent to

St. Kitt's, and was there driven ashore by a hurricane, and wrecked. The remainder of the cargo was saved, and was afterwards sold at the instance of the master, without communication with the merchant, and the proceeds were remitted to the owner of the ship. The merchant sued the owner for the recovery of this money: the owner insisted that he was entitled to retain the whole or some part in respect of freight. The master had acted to the best of his judgment, but the sale was held unwarrantable *(r)*. The form of the action was such as to admit of the owner's claim, if it could be substantiated: and in argument before the Court, it was questioned, whether any freight was payable in respect of the goods sold at *St. Kitt's*; and if any, then, whether such freight were to be calculated on the portion of the voyage performed in point of time or distance, or only on the proportionate diminution of expence between the rate of freight from *St. Kitt's* to *London*, and from *Honduras* to *London*; and whether the freight should be allowed on the quantity of the goods sold, or in the proportion which the clear produce of the sale bore, either to the prime cost, or to the value in *London*. But the Court being of opinion that the owner was not entitled in this case to any freight *pro ratâ*, the questions as to the mode of computation remained undecided. The distinction between one of the principal facts of this case, and of the case of *Baillie* v. *Moudigliani*, which I have before mentioned, is obvious *(s)*. In this case the sale of the goods took place at the unauthorized instance of the master of the ship, in the other it took place under the authority of a Court of Prize, by whose acts the final transport of the goods to the place of destination had been prevented. And in delivering the judgment of the Court in the present case, Lord *Ellenborough*, after commenting very forcibly on this distinction,

(r) See before part 1. ch. 1. sect. 2 & 3. page 3 to 11, and chap. 3. of this part. sect. 8. *b*. page 241.

(s) See before sect. 15. of this chapter, page 313.

tinction, proceeded as follows: "The principles which ap-
" pear to govern the present action are these: the ship
" owners undertake that they will carry the goods to the
" place of destination, unless prevented by the dangers of
" the seas, or other unavoidable casualties; and the
" freighter undertakes that if the goods be delivered at
" the place of their destination, he will pay the stipulated
" freight: but it was only in that event, *viz.* of their deli-
" very at the place of destination, that he, the freighter,
" engages to pay any thing. If the ship be disabled from
" completing her voyage, the ship-owner may still entitle
" himself to the whole freight, by forwarding the goods by
" some other means to the place of destination; but he has
" no right to any freight if they be not so forwarded, unless
" the forwarding them be dispensed with, *or unless there be*
" *some new bargain upon this subject.* If the ship-owner
" will not forward them, the freighter is entitled to them
" without paying any thing. One party, therefore, if he
" forward them, or be prevented or discharged from so
" doing, is entitled to his whole freight; and the other, if
" there be a refusal to forward them, is entitled to have
" them without paying any freight at all. The general
" property in the goods is in the freighter; the ship-owner
" has no right to withhold the possession from him, un-
" less he has either earned his freight, or is going on to
" earn it. If no freight be earned, and he decline proceed-
" ing to earn any, the freighter has a right to the posses-
" sion. The captain's conduct in obtaining an order for
" selling the goods, and selling them accordingly, which
" was unnecessary, and which disabled him from forward-
" ing the goods, was in effect declining to proceed to earn
" any freight, and therefore entitled the plaintiff to the en-
" tire produce of his goods, without any allowance for
" freight" *(t)*.

17. *d.* In this case of *Hunter* v. *Prinsep*, it will be observed

(t) Hunter v. *Prinsep*, 10 East, 378.

observed that the act of the master had deprived the merchant of his election to accept the goods at the place of the disaster, or require them to be carried to the port of destination, and that there was nothing in the conduct of the merchant, from which a new contract could be inferred. In the case, which I am now about to mention, the conduct of the merchant excluded the presumption of a new contract. The ship *Mayflower* was chartered at *Hull* to proceed from thence to *Shields* for a cargo of coals, and sail therewith to *Lisbon* with the first convoy; the freight at the rate of 20 *l.* per keel of coals to be paid on the right delivery of the cargo. The ship took in her cargo and sailed to *Portsmouth*, where she joined convoy, and sailed therewith to *Lymington*, where they were detained some time by contrary winds; at last the sailing instructions, which the master had received from the commodore, were recalled; and the ship returned to *Spithead*, the ports of *Portugal* being shut against *British* ships by the *Portuguese* government. The *French* soon afterwards took possession of *Portugal*, and continued to occupy it until the present action was brought. At the expiration of about two months from the ship's return to *Spithead*, the master formally required the merchants to land the coals, and gave them notice that unless this was done, he would land and warehouse them at their expence and risk, and that he reserved to himself the right of proceeding at law for freight, demurrage, &c. The merchants replied, "If you land "the coals, you will take the consequence; we do not "consent, if we are to be called upon for freight and ex-"pences." The cargo remained on board the ship nearly two months more, and was then landed by the master after another notice, to which it does not appear that any answer was returned. The coals were afterwards sold by consent of both parties without prejudice on either side, and produced a clear profit of 166 *l.* 18 *s.* on the prime cost, after payment of the expence of unloading, landing, and warehousing. The master sued the merchant for a compen-

sation,

sation, for the portion of the voyage performed, and for the detention of the ship. The action was in the same form as in the case of *Luke* v. *Lyde*, which was cited in support of the master's claim; but Lord *Ellenborough* said, "That was upon the ground of there having been an acceptance of the cargo by the owner in the course of the voyage, which shewed his election to receive his goods at that place, instead of having them sent on to the place of their original destination: but *the acceptance of the goods was the very substance of the new implied contract in Luke* v. *Lyde*. But here there has been no agreement to accept the goods; but they were landed and sold without prejudice to either party. The case of *Luke* v. *Lyde* has been often pressed beyond its fair bearing, but the true sense of it has been explained by my brother *Lawrence*, in *Cook* v. *Jennings (u)*, and my brother *Le Blanc* in *Mulloy* v. *Backer (x)*. Then what does this case amount to? The parties have entered into a special contract, by which freight is made payable in one event only, that of a right delivery of the cargo according to the terms of the contract; and that event has not taken place; there has been no such delivery; and consequently the plaintiff is not entitled to recover: he should have provided in his contract for the emergency which has arisen" *(y)*.

17. *e.* Again. The *American* ship *Neptune* was chartered for a voyage from *Sandy Hook* to *Charlestown* to take in a cargo, and from thence to *Tonningen*, *Amsterdam* or *Rotterdam*, there to deliver the cargo to the merchant or his agents, with a proviso, that if advice should be received at *Charlestown* before the departure of the ship from that place, that the blockade had been taken off the river *Elbe*, the merchant should be at liberty to send her to *Hamburgh* direct, in lieu of the other ports. Under this charter-party the ship took in a cargo of sugar and rice at *Charlestown* in

(*u*) See before, page 317.
(*x*) See before, page 318.
(*y*) *Liddard* v. *Lopes & another*, 10 East, 526.

in *August* 1807, consigned by the bills of lading to Messrs. *R. Groning & Co.* of *Hamburgh* to be delivered to them at *Tonningen*, (or in case the blockade of the *Elbe* was taken off, to proceed on to *Hamburgh* direct) on payment of freight pursuant to the charter-party. In sailing up the Channel the master received information of the *British* orders in Council issued in *November* 1807, directing the capture and condemnation of vessels trading to places at war with *Great Britain*, or from which the *British* flag was excluded; but further directing that all vessels, which should arrive at any port in the *United Kingdom* in consequence of information of this regulation received after taking their cargoes on board, should be permitted to proceed upon their voyage to their original port of destination, if not previously unlawful. In consequence of this information the master brought his ship to *Sheerness*, and came to *London* to consult the merchant's agents there. They soon procured his Majesty's licence for the ship and cargo to proceed to *Rotterdam* or any port in the North Sea; and they urged the master to proceed to *Rotterdam*. But the master finding that under a *French* decree the ship and cargo might be liable to *French* confiscation for having touched at an *English* port, refused to proceed on the voyage: And on the one hand the master offered to deliver up the cargo on being paid his freight and charges, while on the other hand, the agents refused to receive it, and insisted that he was bound to complete his voyage according to the charter-party. After some time the master brought the ship to *London*, and there landed the cargo, and again offered to deliver it on payment of his freight and charges: the agents still refused, and apprehending the master was about to sell the cargo, they applied to the Court of Chancery to restrain him from so doing, and to compel him to deliver it to them without prejudice to the merchant's claim of damages for the non-performance of the charter-party. The master insisted that he had a lien upon the cargo for freight and charges. The *Lord Chancellor* granted

granted the injunction, and directed two questions to be tried in a Court of Law: first, whether the master was entitled to any and what sum of money for *freight* on this cargo; and secondly, whether he was entitled to any and what sum of money by way of compensation for the carriage of the goods from *Charlestown* to *London*. In the mean time the goods were ordered to be delivered to the agents by consent, without prejudice to the rights of the parties. The questions came on for trial before Lord *Ellenborough*, who is reported to have expressed himself as follows: "It is clear that in this case the plaintiff can "have no claim for *freight*. Freight could only be earned "by performing the terms of the charter-party. Then, is "he entitled to any sum by way of *compensation* for the "carriage of the goods from *Charlestown* to the port of "*London*? his right to compensation must arise out of "some contract expressed or implied. There is no express "contract set up; and from what can we imply a promise "to pay for the carriage of the goods to *England*? They "are brought here instead of being conveyed to their port "of destination, and an application being made to the Lord "Chancellor to prevent their being tortiously disposed of "by the captain, they were taken possession of on behalf "of the consignee, without prejudice to the rights of the "parties. This is no acceptance of the goods short of the "port of destination, and no foundation for a promise to "pay *pro ratâ itineris*. I am therefore of opinion, that "both issues must be found for the defendant." This was accordingly done; and the direction of the learned Chief Justice was afterwards approved by the Lord Chancellor *(z)*.

17. *f.* These cases therefore establish that acceptance of the goods is necessary to found an implied contract for the payment of freight *pro ratâ itineris*. In the case of *Luke* v. *Lyde*

(z) Osgood v. *Groning*, 2 Camp. 466.

v. *Lyde*, the acceptance was the only ground, upon which the implication could be raised, and must have been thought a sufficient ground; for the master had not offered to carry forward the goods, nor could have done so without hiring another ship, for which he must have paid more than the amount of his full freight. Still it may be questionable whether acceptance alone shall in all cases, and as a general rule, be sufficient to raise such an implication, especially if the rateable computation is to be made according to distance or time. To be sure, if the law of *England* has positively established the duty, a promise to discharge the duty may be inferred in this as in other cases; but still the question will remain, has the law of *England* so established the duty? In the case of the ship *Neptune*, which I have just quoted, the *Lord Chancellor* afterwards directed the second question to be tried again in a Court of Law, and ordered the merchant to admit that he had accepted the goods at the port of *London*, if it should appear that the master could not reasonably have been required to proceed on the voyage; considering that if the master could not reasonably have been required to proceed, the merchant, ought to have accepted the goods, and his refusal to accept them was an act against conscience, and a proper subject for the jurisdiction of a Court of Equity, which on many occasions places parties in the situation, in which they would stand, if that, which ought to have been, had been actually done. At the second trial, the jury upon the evidence before them were of opinion, that the request to proceed to *Rotterdam* was a reasonable request, it appearing that other *American* vessels had, under similar circumstances, delivered their cargoes in safety at *Rotterdam* at the same period of time. The fault therefore fell upon the master, the verdict at law passed against him, and he was ultimately ordered to pay the costs of the suit in Equity; and no decision could be made upon the master's right to compensation generally, or upon the particular amount

amount to which he might be entitled *(a)*. But it is observable that the form of the question directed to be tried left the right of the master to any compensation open for the consideration of the Court of Law, even if it should appear that the merchant ought to have accepted, or had accepted, the goods. For the jury are not directed in that event to award a compensation absolutely, but are to try in the first place, whether the master was entitled to any compensation. It seems probable that the carriage of the goods from *Charlestown* to *London* was a benefit to the merchant, though a less benefit than the carriage of them to *Rotterdam* would have been *(b)*.

17. *g*. The authority of the Court of Admiralty being exercised upon the ship and cargo *in specie*, or (which is in effect the same thing) upon the proceeds of a sale made under its own decrees, is very different from that of a Court of Common Law. The nature of this jurisdiction, as applied to the subject now under consideration, will be best collected from the report of the explanation given of it by the learned Judge who now presides in that Court. "In "the case of the *American* ships bound to *France* or *Hol-* "*land*, which were brought into the ports of this country "under the prohibitory law, the full freight was pronounced "to be due where the owners of the cargoes elected to sell "here; where they did not elect to sell here the Court left "it to them to settle the freight with the owners of the "ships. The Court considered a voyage from *America* to "this country very nearly the same in effect as a voyage "to those contiguous countries to which those vessels "were originally destined; in all probability the markets "of this country were not less favourable than in the block- "aded ports, and no doubt the sale was effected with "every attention to the interests of the owners of the "cargo. In those cases the Court gave the master the full "benefit

(a) Osgood v. *Groning*, 2 Camp. 471. and from the papers in the cause.

(b) See the next section. The cargo was sugar and rice, principally sugar.

" benefit of the freight, not by virtue of his contract, be-
" cause, looking at the charter-party in the same point of
" view as the Courts of Common Law, it could not say
" that the delivery at a port in *England* was a specific
" performance of its terms. But there being no contract
" which applied to the existing state of facts, the Court
" found itself under an obligation to discover what was
" the relative equity between the parties. This Court sits
" no more than the Courts of Common Law do to make
" contracts between parties; but as a Court exercising an
" equitable jurisdiction, it considers itself bound to provide
" as well as it can for that relation of interests, which
" has unexpectedly taken place under a state of facts out
" of the contemplation of the contracting parties in the
" course of the transaction" *(c)*.

17. *h.* The preceding passage has been extracted from the report of a case of peculiar hardship. The *British* ship *Friends*, being chartered at *Campeachy* to deliver a cargo at *Lisbon*, sailed therewith to the very entrance of the *Tagus*, and being there warned off by the blockading squadron continued some days with the fleet, but was afterwards blown out by a gale of wind, taken by a *Spanish* privateer, retaken by a *British* cruizer, and carried into *Madeira*, where the ship and cargo were sold by the re-captors to pay the salvage. A decree was afterwards made for the restoration of the ship and cargo *(d)*, and the Court was called upon to consider what freight should be allowed under the circumstances of the case. The owner claimed the whole freight, as the ship had gone up to the very mouth of the destined port; the merchant contended that nothing was due because the cargo was not delivered according to the terms of the charter-party. The learned Judge, explaining the nature of his jurisdiction in the words that have been just quoted, and considering the calamity as common

(c) In the case of the FRIENDS, *Creighton*, 1 Edw. Ad. Rep. 246.

(d) Probably this must mean of the proceeds, deducting the salvage, &c.

common to both parties and not attributable solely to either, for the ship could not have entered the port in ballast, nor the cargo in any other ship, thought that equity suggested a division of the loss, and directed a moiety of the freight to be paid *(e)*.

It may be proper to remark, that in this case the learned Judge did not apply the rule of payment *pro ratâ itineris* in the same strict way in which it was applied by the Court in *Luke* v. *Lyde (f)*, and by the opinion of Lord *Mansfield* in *Baillie* v. *Moudigliani (g)*. The only essential difference between this case and *Luke* v. *Lyde* is the acceptance of the cargo; for there the cargo was burthened with salvage to the amount of one-half, and the Court dealt with that circumstance by considering half the cargo as actually lost, and half only as delivered and accepted. In *Baillie* v. *Moudigliani*, the whole had been originally sold, as here, under the decree of a Court of competent jurisdiction, and the subsequent award of restitution could operate only upon the proceeds of the sale.

18. But as the right to freight does not commence until the ship has broken ground and begun the voyage, no partial payment can be claimed for goods laden on board, if even without the fault of the master the ship is prevented from actually setting forth on the voyage. And therefore in the case of a ship, which took on board a cargo in *Salt River*, in *Jamaica*, at a very great expence to the owners, (who by the usage of the *West India* trade fetch the cargoes from the shore at *their* expence,) and which actually cleared out for the voyage, but, while waiting for convoy, was cut out of the river by two *French* privateers, and being afterwards retaken, was carried into *Port Royal*, where the cargo was sold under an order of the Court of Admiralty, and the proceeds thereof with the deduction of salvage paid to

(e) The FRIENDS, *Creighton*, 1 Edw. Ad. Rep. 246.

(f) See before, sect. 14, of this chapter, page 310.

(g) See before, sect. 15, of this chapter, page 313.

to the merchants: it was decided that nothing could be claimed of the merchants, although each of the Judges expressly recognized the rule of the marine law as to the partition of freight *pro ratâ itineris:* the Court holding, that in this case there had been no commencement of the voyage, and therefore no freight could be due; and that, as the freight was by the contract the only remuneration of all the services performed by the owners, they were not entitled to any recompence for the expence of taking the goods on board *(h)*.

19. It often happens that a ship is hired by a charter-party to sail from one port to another, and from thence back to the first, as for instance, from *London* to *Leghorn*, and back from thence to *London*, at a certain sum to be paid for every month or other period of the duration of the employment. Upon such a contract, if the whole is one entire voyage, and the ship sail in safety to *Leghorn*, and there deliver the goods of the merchant, and take others on board to be brought to *London*, but happen to be lost in her return thither, nothing is due for freight, although the merchant has had the benefit of the voyage to *Leghorn:* but if the outward and homeward voyage are distinct, freight will be due for the proportion of the time employed in the outward voyage *(i)*.

Upon this point *Malyne* mentions a remarkable case of five ships, in which he himself was interested as one of the merchant freighters. The whole five were freighted out from this country for *Leghorn* and *Civita Vecchia*, and back from those places. They all performed their outward voyage, but before any part of the homeward cargo was shipped, they all set sail, and came away, through fear of being taken by the gallies of *Don Andrea Doria*, who intended to surprise them,

(h) Curling v. *Long*, 1 Bos. & Pull. 634.

(i) This proposition is laid down by *Molloy*, book 2. ch. 4. sect. 9. and he cites in support of it the before-mentioned case of *Bright* v. *Cowper*, with a reference to *Brownlow*, in whose report the point does not appear.

them, the *Grand Armada* being then preparing in *Spain*. Two of the ships had waited for their lading the whole time stipulated by their charter-parties, and the masters had made their protests against the factors, who should have laded them. These two, says the author, were by the law of the Admiralty adjudged to have deserved their whole freight. Two others not having waited the stipulated time, could not be found to have deserved any freight at all, although they were laden outward. The fifth ship also had not waited the stipulated time, but her charter-party contained a proviso, that if she should be taken or cast away on her return out of the *Streights*, the freight outwards, which was accounted half, should be paid; and that half and no more was adjudged to the master *(k)*.

It should seem that this proviso, in the case of the fifth ship, occasioned the outward and homeward voyages to be considered as distinct voyages, for the event mentioned in the proviso had not happened. And a similar construction was given to a very different charter-party in the following case *(l)*. *Mackrell*, the owner of a ship called the *Richard*, lying in the river *Thames*, let his ship to freight by a charter-party, dated 9th of *March* 1774, to *Simond & another* " by the month, for such time as she should be employed " in performing a voyage from *London* to *Plymouth*, and " the island of *Grenada*, and from thence back to *London*," whereby the plaintiff covenanted, " that the ship should, " pursuant to the orders and directions of the freighters, " their factors or assigns, prosecute and perform the voyage " above-mentioned, (the dangers and perils of the sea, and " the restraint of princes and rulers excepted), and should " in such *outward and homeward voyage* load and unload " all

(k) *Malyne*, p. 98.

(l) *Mackrell* v. *Simond & Hankey*, in K. B. Trin. T. 16 *Geo.* 3. It was an action of covenant on the charter-party, in the first count of which the plaintiff claimed freight for the period of the voyage to *Grenada*; in the second up to the day of the loss of the ship. The defendants demurred to both counts Judgment was given for the plaintiff on the first count, and for the defendants on the second.

" all lawful goods:" and that his ship's company and boats should aid and assist in unloading and reloading the said ship's cargoes as customary at the island of *Grenada*; and that he would pay all port-charges and pilotage. In consideration whereof, the defendants covenanted that they " would load and unload the ship, and give the master " proper orders in respect thereof: and that the ship " should be discharged out of her said monthly employ on " the delivery of her homeward cargo in *London*, and also " should and would well and truly pay or cause to be paid " to the said owner, his executors, administrators, or as- " signs, in full for the freight and hire of the said ship at " the rate of 110 *l.* sterling *per* calendar month, for all such " time as the said ship should be taken up in performing " the voyage aforesaid, to commence and be accounted " from the day of the date of the said charter-party, and " to end and determine on the day of the discharge of the " homeward cargo at *London*, and to be paid one-third " part thereof on her report inwards at the Custom-house, " *London*, and the remaining two-third parts thereof in " two calendar months then next following."

In pursuance of this charter-party, the ship took in goods belonging to the merchants *Simon & Hankey* at *London*, sailed with them to *Plymouth*, and there took in other goods belonging to them, and from thence proceeded to *Grenada*, and there landed the cargo; and received another cargo from the merchant's factor there, with which she set sail for *London*; but on the way was lost by tempest. The voyage to *Grenada* occupied *three* months; and *five* months elapsed in the whole before the loss of the ship: after the misfortune the owner brought an action against the merchants, claiming of them the payment of freight either for *three*, or for *five* months. The merchants insisted that nothing was due. The Court decided that freight was payable for *three* months, the period of the outward voyage. And Lord *Mansfield* delivered his judgment to the following effect: " This question depends upon " the

" the construction of the charter-party. If the parties " have expressed their meaning defectively, the Court must " be guided by the nature of the thing. The charter-party " puts no case but that of a prosperous voyage out and " home; it provides for freight on the supposition that the " ship will arrive safe and report her cargo; no provision " is made for any other case. If the ship be cast away on " the coast of *England*, and never arrive at the port of " *London*, yet if the goods are saved, freight shall be paid, " because the merchant receives advantage from the voyage. " This is not expressed by the charter-party, but arises out " of the equity of the case. Freight is the mother of " wages, the safety of the ship the mother of freight: that " is the general rule of the maritime law. If there be one " entire voyage out and in, and the ship be cast away on " the homeward voyage, no freight is due, no wages are " due, because the whole profit is lost; and by express " agreement the parties may make the outward and home- " ward voyage one. Nothing is more common than two " voyages; wherever there are two voyages, and one is " performed, and the ship is lost in the homeward voyage, " freight is due for the first. Here the outward and home- " ward voyage are so called in the charter-party. The " cargo is loaded outwards, and the owner covenants to " pay port-charges on the outward voyage. The whole of " that voyage was completed: port-duties are incurred and " paid. Nothing however is due on the homeward voyage, " though the ship might be out a mouth."

In the following case *(m)* the words of the charter-party

(m) Byrne & others v. *Pattinson*, in K. B. Trin. T. 37 *Geo.* 3. The question arose on a set-off pleaded by the defendant, the master of the ship, to an action brought against him on another account by the merchant. The plea did not refer to the charter-party, but was for the freight and hire of the ship from *Liverpool* to *Madeira*, and from thence to *Barbadoes*, and for the disbursements and port-charges of the ship at *Madeira* and on the voyage; and for work and labour generally, and money paid; so that the decision did not turn upon the form of the proceedings in the cause. The question came before the Court by a special case reserved from the assizes.

party being different, a different construction prevailed. One *Pattinson*, master and part owner of the ship *William & Mary*, lying at *Liverpool*, by a charter-party, dated 28th *July* 1794, let the ship to freight to *Byrne & others*, for a voyage intended to be made from *Liverpool* to the island of *Madeira*, and from thence to the island of *Barbadoes*, and from thence back to *Liverpool*, *Greenock*, or *Bristol*, but with liberty for the freighters to order the said vessel from *Barbadoes* to any other island in the *West Indies* (*Jamaica* excepted) they paying all pilotage and port-charges incurred thereby. And the said freighters accordingly by the said charter-party took and hired the same in manner following (that is to say), that the master should immediately receive and take a cargo on board the said vessel from the freighters, and the said vessel so loaded should immediately proceed direct to *Madeira*, and deliver such goods as should be ordered by the said freighters, and also should receive and take on board the said vessel at *Madeira* such other goods as the said freighters might think proper to ship, and that being done, the master should proceed with the said vessel to *Barbadoes*, and there make delivery of her cargo, and receive and take on board a cargo from the freighters, and being loaden therewith, should with the first opportunity proceed direct to the port of *Liverpool*, *Greenock*, or *Bristol*, and there deliver the same cargo, and so *end the said intended voyage*. In consideration of which, the said freighters thereby promised and agreed, amongst other things, to pay to the *defendant* in full for the freight and hire of the ship for the said voyage, the sum of 136*l.* 10*s.* *per* calendar month for six months certain, to commence in eight days after she was ready to receive the cargo at *Liverpool*, and to continue until she was discharged at *Liverpool*, *Greenock*, or *Bristol*, together with two-thirds the amount of all pilotage and port-charges, that might accrue, and be paid during the course of the said voyage, with customary primage; payment thereof to be made in manner following, *viz.* 136*l.* 10*s.* to be advanced

advanced before sailing from *Liverpool* by a good bill at three months date, and what cash might be required for the said vessel's disbursements and port-charges at *Madeira* and *Barbadoes*, to be paid in part of the said freight, and the remainder of the said freight should become due and be paid on the final discharge of the said vessel at *Liverpool*, *Greenock*, or *Bristol*, by good bills on *London* at three months date. The period of computation commenced on the 7th *August* 1794; on the 19th of that month the ship sailed from *Liverpool* for *Madeira*, freighted with goods, and arrived there on the 19th of *September*, and discharged at that place, by the 4th of *October*, as many of the goods as were to be delivered there, and took on board on account of the merchants ninety pipes of wine, and sailed from thence on the 9th of *October* for *Barbadoes*, but on the 10th of *November* was captured on the way thither. The merchants had paid 135*l.* part of the freight for the first month, and also the port charges and disbursements for the ship at *Madeira*. *Pattinson* now claimed in the present suit further freight from the 7th of *September* to the day of the ship's capture, or to the day when she had completed the delivery at *Madeira*, or freight for the goods delivered there, at the usual rate of conveyance, allowing the 135*l.* But the Court held that he had no claim whatever. On his part it was contended that there ought to be an apportionment in this case; and the passage before cited from *Malyne*, relating to a ship lost at *Dover*, was quoted as an authority in his favour. But *Lord Kenyon*, Chief Justice, said, "In that case the goods came to the "merchant's hands, and the owner of the ship might have "provided another ship to carry them to *London*. In this "case, by the terms of the contract, the freight is to *be-* "*come due* at *Liverpool*, and therefore it cannot be claimed "before."

These two cases may serve as a guide for the construction of other charter-parties on the same subject, or for the framing of a charter-party in such a manner as to

express the real meaning of the contracting parties without ambiguity.

20. By a charter party, made for a voyage from *London* or *Portsmouth* to *Monte Video*, and back to some port of discharge in *Great Britain*, with a provision that the master should touch at the coast of *Africa* for a certain purpose, if required; the freighter covenanted to pay 670*l.* *per* month, for every calendar month the ship should be employed by him the freighter during the said intended voyage to *Monte Video* and back to her port of discharge, and so in proportion for any less time, in full for the hire of the ship during her intended service; such freight to commence from the day the ship should be ready to receive goods on board at *Portsmouth*, and end when she should have finally discharged the whole of her said cargo; and also pay two-thirds of all pilotage and port charges during the whole of the voyage, and also two-thirds of all expences of stowing the said ship's cargo at *Monte Video*; *such freight, pilotage and port-charges to be paid on the arrival and discharge of the ship at her destined port in Great Britain.* Upon this contract an action was brought against the freighter, and it was alleged, on the part of the owner, that the ship took in such goods at *Portsmouth* as the freighter thought fit to lade, and then proceeded on the voyage, and touched at the coast of *Africa* as required, and in the prosecution of the outward voyage was, before her arrival at *Monte Video*, without the fault of the owner, master or crew, by persons unknown wrongfully seized and sent to *London*, and there detained for a considerable time, but afterwards liberated and restored to him; that he then made the necessary repairs, and having properly fitted, victualled, and manned the ship, gave notice thereof to the freighter, and offered to prosecute and complete the voyage, and required from him the necessary directions for that purpose, but that the freighter refused to give any directions, or to permit the ship to pursue the voyage, and wholly renounced the charter-party, and discharged the owner from further prosecuting

cuting the voyage. It was further alleged that the ship had been employed in the voyage twelve months, and that the freight thereof amounted to 8,040 *l.*; that she would have been employed for twelve months more, if the freighter would have permitted, and the freight thereof would have amounted to another sum of 8,040 *l.* and that two-third parts of the pilotage and port-charges during the voyage amounted to 50 *l.*; and the complaint was that the freighter, who had been requested to pay these sums, had refused to do so. So that by the form of the action the owner claimed to recover the freight, &c. as due, and not to recover damages against the freighter for refusing to allow him to prosecute the voyage *(n)*. And on behalf of the owner it was contended, that as he had done all in his power toward the completion of the voyage, and the further prosecution and completion of it were prevented by the freighter, he had acquired a right to the sums demanded as freight, &c. as fully as if the voyage had been performed, and the ship had arrived and been discharged at her destined port. But the Court, adverting to the particular terms of the contract, whereby the freight, &c. were made payable on the arrival and discharge of the ship at her destined port in *Great Britain*, and considering that the efforts of the owner could not possibly insure this event, which might be defeated by the act of God, and various accidents, to which marine adventures are subject, held this not to be one of those cases, in which an offer to perform an act, if refused by the party to be charged by the performance, is equivalent to performance itself, and consequently that the owner was not entitled to recover the freight, &c. which he claimed in this action *(o)*.

Also

(n) It is not clear that the charter-party contained any covenant, on the part of the freighter, that would have furnished a ground for such an action for damages.

(o) *Smith* v. *Wilson*, 8 East, 437. It was an action of covenant, the facts stated in the text were contained in the plaintiff's declaration. The defendant pleaded some special pleas to which the plaintiff demurred. Upon the argument the Court disregarded the pleas, and gave judgment against the plaintiff upon the declaration.

Also in the case of a ship which arrived with a cargo at *Naples*, where the cargo was seized by the government, and so the master was prevented from delivering it to the consignee of the merchant, it was held that the merchant was not liable to pay the outward freight *(p)*. Again, where by a charter-party a ship was hired to receive a cargo in *London*, and proceed to such places as the merchant should direct, and there unload, reload, and return from thence to *London*, and it was agreed that the ship should continue in the service six calendar months at least, and for such further time as would be necessary to complete the voyage, and the merchant covenanted to pay to the owner for the use of the ship, a certain sum *per* ton *per* month, during the term of six calendar months at the least, and so in proportion for a less time than a whole month, and at the like rate for such further time, if any, and until her final discharge in *London*, or up to the day of her being lost, captured or last seen or heard of, such freight to be paid to the master in cash, in manner following; *viz.* so much as might be earned at the time of the arrival of the ship *at the first destined port abroad*, to be paid within ten days after arrival at such port, and before the delivery of the cargo, and at the expiration of every month after that period, the freight to be paid up from time to time, during the continuance of the ship in the service, and the residue or balance on the day the ship should be finally discharged from the service. And that in default of payment of any part, the master might retain and sell so much of the cargo as might be sufficient to cover the amount; and there was a proviso in the charter-party that the merchant might at any time during the voyage, purchase the ship for a specified sum, upon paying the freight that might be earned up to the time of such purchase. And in fact, it happened that the ship was lost by peril of the sea, before arrival at her

(p) Storer v. *Gordon & others*, 3 M. & S. 308.

her first destined port. It was decided that nothing was payable *(q)*.

In all these cases the Court thought, that according to the true construction of the contract, the payment was made to depend upon an event which never happened.

(q) Gibbon v. *Mendez*, 2 B. & A. 17.

CHAPTER THE EIGHTH.

OF GENERAL OR GROSS AVERAGE.

1. HAVING thus treated of the respective duties of the owner and the merchant, I now proceed to the consideration of a subject, which is equally a duty of the one and the other: namely the General Contribution, that is to be made by all parties, toward a loss sustained by some for the benefit of all. This contribution is sometimes called by the name of *general* average, to distinguish it from *special* or *particular* average, a very incorrect expression, used to denote every kind of partial loss or damage happening either to the ship or cargo from any cause whatever; and sometimes by the name of *gross* average, to distinguish it from *customary* average, mentioned in the bill of lading, which latter species is sometimes called also *petty* average. The principle of this general contribution is known to be derived from the ancient law of *Rhodes*, being adopted into the Digest of *Justinian*, with an express recognition of its true origin. The wisdom and equity of the rule will do honour to the memory of the state, from whose code it has been derived, as long as maritime commerce shall endure. The principal of the rule has been adopted by all commercial nations, but there is no principle of maritime law, that has been followed by more variations in practice. The modern ordinances of the several continental states of *Europe* differ from each other in many particulars relating to this general contribution, and the *French* Ordinance establishes a different mode of contribution in different cases. An enumeration of these varieties would furnish little entertainment or instruction to an *English* reader: discordant rules rather serve to perplex the choice, than to guide the judgment. If any one is desirous of knowing all that doctors have written and states

ordained

ordained, on these particulars, I must refer him to other writers, and particularly to the very elaborate and learned treatise of *Emerigon (a)*, or to the recent publication of Mr. *Benecke* on insurance, in which latter work there is much learning combined with practical experience. The determination of *English* Courts of Justice furnish less of authority on this subject than on any other branch of maritime law; there being few reported cases of questions either between the parties liable to contribution in the first instance, or between a party so liable and an insurer, from whom indemnity has been sought. The work of *Magens* contains a variety of cases of adjustment of average, by consuls and courts abroad, and by merchants at home, detailed with all the tedious formularies of the notarial office, and the minutiæ of the counting-house, but accompanied by some very judicious remarks. Much useful information upon this subject is to be found in Mr. *Park*'s system of marine insurances, and also in the publication by Mr. Serjeant *Marshall* on the same subject, but as the nature of the present work requires that it should also be treated of here, I shall examine, *first*, the cases in which general contribution is to be made; *secondly*, the articles that are to contribute; and *lastly*, the mode of contribution; confining myself as closely as possible to the authorities and practice of our own nation, or to those ancient laws and ordinances, which are generally considered as guides by *English* lawyers on subjects of maritime law *(b)*.

2. The rule of the *Rhodian* law is this: "If goods are "thrown overboard in order to lighten a ship, the loss, in-"curred for the sake of all, shall be made good by the con-"tribution

(a) Chap. 12. sections 39 to 42. *See* also on the subject of this chapter *Weskett* on Insurance titles, *Contribution*, *Cutting*, *General Average*, and *Jettison*, in which are many citations from the foreign ordinances.

(b) Since the publication of the former editions of this book, an Essay on Average has been published by Mr. *Stevens*, of *Lloyd's* Coffee house, which contains some very sensible observations on the subject of *General* Average. The treatise of Mr. *Benecke*, was published after Mr. *Stevens's* Essay.

" tribution of all" *(c)*. The goods must be *thrown* overboard; the mind and agency of man must be employed: if the goods are forced out of the ship by the violence of the waves, or are destroyed in the ship by lightning or tempest, the merchant alone must bear the loss. They must be thrown overboard *to lighten the ship;* if they are cast overboard by the wanton caprice of the crew or the passengers, *they*, or the master and owners for them, must make good the loss. The goods must be thrown overboard *for the sake of all*; not because the ship is too heavily laden to prosecute an ordinary course through a tranquil sea, which would be the fault of those who had shipped, or received the goods; but, because at a moment of distress and danger their weight, or their presence, prevents the extraordinary exertions required for the general safety. When the ship is in danger of perishing from the violent agitation of the wind, or from the quantity of water, that may have forced a way into it, or is labouring on a rock, or a shallow, upon which it may have been driven by a tempest; or when a pirate or an enemy pursues, gains ground, and is ready to overtake; no measure, that may facilitate the motion and passage of the ship, can be really injurious to any one, who is interested in the welfare of any part of the adventure, and every such measure *may* be beneficial to almost all. In such emergencies therefore, when the mind of the brave is appalled, it is lawful to have recourse to every mode of preservation, and to cast out the goods in order to lighten the ship, for the sake of all *(d)*. But if the ship and the residue of the cargo be saved from the peril by the voluntary destruction or abandonment of part of the goods, equity requires that the safety of some should not be purchased at the expence of others, and therefore all must contribute to the loss.

3. Many

(c) Dig. 14. 2. 1. Lege Rhodia cavetur, ut, si levandæ navis gratia jactus mercium factus sit, omnium contributione sarciatur, quod pro omnibus datum est.

(d) Mouse's case, 12 Co. 63. mentioned also in *Bird* v. *Astock*, 2 Bulst. 280.

3. Many of the foreign ordinances *(e)* have prescribed various forms to be adopted with respect to jettison; some of them have even named the persons to be consulted before it takes place, and have set down the phrases of consultation, and specified the sorts of goods that shall be first thrown; and some authors have amused themselves by dividing the act itself into the several species of regular and irregular, formal and informal *(f)*. But the regulations prescribed by persons at ease in the closet or senate-house will seldom be followed at the moment when life, or liberty, is in jeopardy; at such a moment every one present will exclaim with the friend of *Juvenal*, *Fundite quæ mea sunt—etiam pulcherrima*; and provided the jettison have been the effect of danger and the cause of safety, all writers agree that contribution ought to be made, although the forms have not been complied with. Previous deliberation, if there be time to deliberate, and a due choice of the heaviest and most cumbersome articles, may be proofs of the necessity and propriety of the act. but they are not the *only*, and therefore ought not to be deemed the *essential* proofs *(g)*. Indeed in this case, as in many others, too close a compliance with forms at a period of supposed danger has very justly excited a suspicion of fraud *(h)*. In all cases, however, and in all countries, it is justly required of the master that he draw up an account of the jettison, and verify the same by the oath of himself and of some of his crew, as soon as possible after his arrival at any port, that there may be no opportunity

(e) Laws of *Oleron*, art. 8 & 9 Ordin. of *Wisbuy*, art. 20, 21, & 38. *French* Ordinance, liv. 3. tit. 8. *Du Jet.* art. 1, 2, 3, & 4. and *Valin* thereon. *Code de Com.* art. 410, &c.

(f) See *Emerigon*, tom. 1. p. 605. Consolato del mare, cap. 47, 48 & 49.

(g) So decided in *Birkley & others* v. *Presgrave*, 1 East, 220, as to other cases of *general average*.

(h) *Emerigon*, tom 1. p. 605, cites an observation of *Targa*, who says, that during *sixty* years, in which he had been a magistrate at *Genoa*, conversant with this subject, he had known only *five* instances of regular jettison, all of which were suspected of fraud, because the forms had been too well observed.

portunity to purloin goods from the ship, and then pretend they were cast over in the hour of danger.

4. From the rule thus established by the *Rhodians* various corollaries have been deduced. Thus, if in the act of jettison, or in order to accomplish it, or in consequence of it, other goods in the ship are broken, damaged, or destroyed, the value of these also must be included in the general contribution. So, if to avoid an impending danger, or to repair the damage occasioned by a storm *(i)*, the ship be compelled to take refuge in a port, to which it was not destined, and into which it cannot enter without taking out a part of the cargo, and the part taken out to lighten the ship on this occasion happen to be lost in the barges employed to convey it to the shore, this loss also, being occasioned by the removal of the goods for the general benefit, must be repaired by general contribution; but if, after the removal of goods for such a purpose, the ship with the remaining cargo should unfortunately perish, and the goods in the barges be saved, the proprietors of the latter shall not contribute to the loss of the others, because the safety thereof is not owing to that loss. So, if upon the expectation of an hostile attack, part of the cargo be taken out and sent away, and saved, and the ship with the remainder of the cargo, fall into the hands of the enemy, the part saved shall not contribute to make good the loss *(k)*. If part of the cargo be voluntarily, and without fraud or cowardice delivered up to a pirate by way of composition or ransom, to induce him to spare the vessel, and the residue of the goods (an event highly improbable,) or if a sum of money be agreed to be paid to a pirate or enemy by way of ransom, all writers agree that the value of the ransomed must contribute to this loss also; but if the enemy or pirate, having overpowered

(i) In the *Dig.* 14. 2. 4. and the *Guidon*, ch 5. art 28. the rule is laid down in general terms, but most writers confine it to the cases mentioned in the text. See *Beawes*, 165. 2. *Valin*, 167. Yet see *Wellwood*, tit. 20.

(k) Sheppard v. *Wright*, 1 Shower, P. C. 18.

powered the ship, select for himself such parts of the cargo as best suit his purposes, and plunder the ship of them, in this case there shall be no contribution, because the value of these goods was not the price of safety to others *(l)*. But ransom in the case of capture by an enemy, can hardly become the subject of general average in this country, for by an act passed in the twenty-second year of his late Majesty's reign *(m)*, the ransom of any ship or merchandize on board the same, belonging to any subject of this country, and taken by "the subjects of any state at war with his "Majesty, or by any persons committing hostilities against "his Majesty's subjects," was absolutely prohibited; and by a statute made at the commencement of the late war *(n)*, such ransom was prohibited, "unless in the case of ex-"treme necessity to be allowed by the Court of Admiralty;" and all contracts for ransom contrary to those statutes were made void; and the person entering into such contract subjected to a penalty of *five hundred* pounds *(o)*.

5. And not only may the *loss* of goods become the subject of general contribution, but also in some cases the *expence* incurred in relation to them *(p)*. Thus, if it be necessary to unlade the goods in order to repair the damage done to a ship by tempest, or by collision with another vessel, so as to enable it to prosecute and complete the voyage, it has

(l) *Dig.* 14. 2. 2. 3. *Hicks* v. *Palington*, Moore 297. See 22 *Geo.* 3. *c.* 25. and *query* if it affects this. *Wellwood, tit.* 18.

(m) 22 *Geo.* 3. *c.* 25. This statute is not limited as to time, yet the 37th and two following clauses of the 33 *Geo.* 3. *c.* 66. contained the same prohibition, &c. of ransom, and the latter statute was made to continue only during the *last* war with *France*.

(n) 43 *Geo.* 3. *c.* 160. *sect.* 34 & 35. 45 *Geo.* 3. *c.* 72. *sect.* 16, 17.

(o) In consequence of this illegality, if the master ransom his ship, and bring her to *England*, the owner may take her from him without paying the price, *Parsons* v. *Scott*, 2 Taunt. 363. And if the master, to enable himself to pay the ransom, borrow money of a person acting with him in the transaction, he cannot be compelled to repay it. *Webb* v. *Brooke*, 3 Taunt. 6.

(p) See the COPENHAGEN, *Mening*, 1 Rob. A. R. 289, and *Da Costa* v. *Newnham*, 2 Ter. Rep. K. B. 407. also the GRATITUDINE, *Mazzola*, 2 Rob. A. R. 257, where this seems to have been admittted.

has been held *(q)* that the expence of unlading, warehousing, and re-shipping the goods, should be sustained by general contribution, because all persons are interested in the execution of the measures necessary to the completion of the voyage.

6. The rule mentions *goods* only; but its principle extends also to the ship and its furniture; and all that I have hitherto said respecting the goods, is to be understood also of the provisions, the guns, the boat, or other tackle of the ship; a fortiori, it is also to be understood of goods belonging to the owner or master of the ship, as well as of those belonging to the merchant. *Emerigon* illustrates the case of the *boat*, by the relation of a stratagem practised by one of his own countrymen. The master of a *French* vessel, having been pursued for several hours by two frigates, and having also his flight intercepted by the appearance of two other vessels a-head, hoisted, as soon as it became dark, his boat into the sea, furnished with a mast and sail, and a lanthorn at the mast-head, and then changed his course, and sailed during the whole night without any light on board his own ship: in the morning no enemy was in sight. The value of the boat thus abandoned, was made good by general contribution *(r)*. And it has been decided in an *English* court, in the case of a ship captured and afterwards re-captured, that the shippers of goods were liable to contribution for stores *necessarily* thrown overboard during a storm, while she was in the hands of the enemy *(s)*.

7. If sails are blown away, or masts or cables broken by the violence of the wind, the owner must alone bear the loss *(t)*. The broken tools of an artificer bring no charge upon his employer. And this rule has been held to apply to

(q) *Plummer* v. *Wildman*, 3 M & S. 482.

(r) *Emerigon*, tom. 1. page 622.

(s) *Price* v. *Noble*. 4 Taunton, 123. In this case, *the necessity* of the jettison *was proved* by the testimony of the mate, who had not been taken out of the ship, and who had effected the re-capture.

(t) *Dig.* 14. 2. 2. 1. and 14. 2 6. *Wellwood*, tit. 17. *Roccus*, not. 60. Laws of *Oleron*, art. 9. Laws of *Wisbuy*, art. 12. *Code de Com.* art. 403, N° 3.

to the case of a mainmast broken in a heavy gale, by carrying an unusual press of sale in order to escape from an enemy, to whom the ship had struck *(u)*, and also to masts and sails broken by carrying such sail to avoid being driven on shore, and stranded *(x)*. But if the master, compelled by necessity, cut his cable *(y)* from the anchor, in order to use it as a hawser, or if he cut away and abandon his masts *(z)*, sails, or cables, to lighten and preserve the ship, their value must be made good by contribution.

In like manner *(a)* the damage voluntarily done to a ship by cutting its deck or sides in order to facilitate a necessary jettison, or by running it on a rock, shallow, or strand, to avoid the danger of a storm, or of an enemy, and the expence of recovering the ship *(b)* from this latter situation; and also the pilotage, port-duties, and other charges incurred by taking a ship into a port to avoid an impending peril, and the expence of extraordinary assistance *(c)* to preserve and secure a ship from the violence of a storm at its entrance into the port of destination, are to be sustained by a general contribution. But the expence incurred in a port, in which the ship may have taken refuge during the voyage, by repairing the damage done to the ship by tempest alone, seems with more propriety to fall upon the owners, and is so held to do in the civil law *(d)*, and by many foreign writers. Yet in one case, where the master of a ship was under the necessity of cutting away part of his rigging in consequence of collision with another vessel that was driven against him in a storm, and of returning to the place of his departure to repair the damage occasioned

(u) *Covington* v. *Roberts*, 2 Bos. & Pull. N. R. 378.

(x) *Power & another* v. *Whitmore*, 4 M. & S. 141.

(y) *Birkley & others* v. *Presgrave*, 1 East, 220.

(z) *Marsham* v. *Dutrey*, select cases of evidence, p. 58. *Dig.* 14. 2. 3. and 5. 1. *Code de Com.* art. 400, N°3 & 4.

(a) *Dig.* 14. 2. 2. 1.

(b) Laws of *Wisbuy*, art. 55. *Molloy*, book 2. ch. 6. sect. 15. and *see* also *Beawes*, p. 165. and *Wellwood*, tit. 20.

(c) *Birkley & others* v. *Presgrave*, 1 East, 220.

(d) *Dig.* 14. 2. 6. and *Emerigon*, tom. 1. p 625.

sioned by the collision, and of unloading his cargo there for the purpose of such repairs, it was held that the expence of so much of the repair as was absolutely necessary to the performance of the voyage, including the necessary expence of unloading, should be made good by a general average *(e)*.

A doubt was formerly entertained as to the expences of a ship in a port in which she had taken refuge to repair the damage occasioned by tempest; but this has been removed by late decisions. And it has been held that the wages and provisions of the crew during such a period must fall upon the ship alone *(f)*. So in the case of collision that has just been mentioned, it was held that the expences of the master during the repairs, and of providing other seamen to replace deserters, must be sustained by the owner alone *(e)*. But if a ship should necessarily go into an intermediate port for the purpose only of repairing such a damage as is in itself a proper object of general contribution, possibly the wages, &c. during the period of such a detention, may also be held to be general average, on the ground that the accessary should follow the nature of its principal.

8. There is also an earlier decision of the Court of King's Bench on this subject, which appears to have been decided upon the construction of a charter-party. A ship, chartered for a voyage to the *East Indies* and back, sprung a leak at sea on her return home, in consequence of which it became necessary to put into the *Cape of Good Hope*, and there take out the cargo in order to repair the ship. The ship, being repaired and reladen, returned home in safety; and the owners claimed from the freighter a payment in the nature of general average toward the expence of the repairs, the maintenance of the crew, and other charges connected with the repairs. But the Court, considering

(e) Plummer & another v. *Wildman*, 3 M. & S. 482.

(f) Power & another v. *Whitmore*, 4 M. & S. 141. And see the *Code de Com.* art. 403, N° 3.

sidering the import of several clauses of the charter-party to be, that the owners should keep the ship in repair during the whole voyage at their own expence, and being also of opinion that the expressions used in another clause tended to shew that the defendant was to be liable to general average in the case of jettison alone; held that upon the construction of this charter-party the plaintiff was not entitled to recover any thing for the expences thus incurred at the Cape *(g)*.

9. With respect also to the wages and maintenance of the crew during the detention of a ship by the orders of a sovereign power, contradictory opinions are to be found in the works of writers on this subject *(h)*. Some authors have taken a distinction between the case of an embargo in the lading port, and the arrest and detention of a ship during the course of the voyage. The *French* Ordinance provides for the latter case, by declaring, that if the ship be hired by the *month*, the charges shall be reputed general average; but if hired for the *voyage*, the owners alone shall bear them *(i)*. The reason of this regulation is not easily discernible *(k)*, and it is in express contradiction to the spirit of another article of the same Ordinance on the subject of freight *(l)*. In the case of *Da Costa* v. *Newnham (m)*, Mr. Justice *Buller*, speaking of this expence of wages and provisions during the detention of a ship by embargo, says, "the Court has said that these charges shall fall upon the "owners only, and the freight must bear them." And this case does not seem to fall within the principle of the *Rhodian* law, because here the delay does not proceed from the act of the master or persons belonging to the ship; nor is it for the general benefit.

(g) *Jackson & another* v. *Charnock*, 8 Ter. Rep. K. B. 209.

(h) *Emerigon*, tom. 1. p. 631. *Beawes*, 165.

(i) Liv. 3. tit 7. *Des Avaries.* art. 7. *Code de Com.* art. 400, N° 6. & 403, N° 4.

(k) But see *Pothier.* Ch. Partie. num. 85. *Emerigon*, tom. 1. p. 539.

(l) Liv. 3. tit. 3. *du Fret.* art. 16.

(m) 2. Ter. Rep. K. B. p. 407. This was an action brought against the insurers of a ship, by the owner who had offered to abandon to them, and had a right to insist upon doing so, but had reluctantly consented to the repairs at their instance.

10. For the additional expence of the wages and maintenance of the crew incurred while a ship has been waiting for convoy, general contribution has sometimes been claimed; and three decisions of the different Courts in *Holland* on this subject are related by *Bynkershoeck (n)*, which seem worthy of notice in this place. In the first case the master of a general ship, which was armed, and had letters of marque, and was bound to several *Italian* ports, during a war between the *Dutch* and *French*, gave public notice of his intention to receive goods, and to sail for those ports, without the company of other ships. Having received a cargo, he set sail under convoy of a ship of war destined for *Portsmouth*, entered with her the harbour of that place, and there waited a whole year for another convoy, under which he sailed to *Cadiz*; and there waited a second year for a third convoy, under which he sailed to *Italy*, and delivered his cargo there. Under these circumstances the master sued the merchants for general average, and obtained a decree in his favour, which was confirmed by one Court of appeal, reversed by a second, and at last finally affirmed by the Senate, of which the learned author was then a member; against his opinion, and against the general principles of law on this subject, and against the particular engagement made by the master on this occasion. This judgment appears to have been disapproved of in *Holland*; for, in another case, which happened soon afterwards, where five *Dutch* vessels coming from *Surinam*, and learning on their voyage that a war had broken out between the *Dutch* and *French*, put into *Plymouth*, and there waited for convoy; which case also went through all the same tribunals, the Senate decreed against the claim of contribution. A *third* case happened soon afterwards, in which the same four Courts successively decreed in favour of the claim *(o)*. But of this the circumstances were very different from

(n) *Bynkershoeck, Questiones Juris Privati*, lib. 4. cap. 25.

(o) For the sake of those who complain of delay in the administration of justice in this country, it may be proper to mention, that

from the two former, and such as seem to warrant the judgments pronounced in it. It was the case of a ship freighted from *Amsterdam* to *Cadiz*, with a stipulation to sail with convoy either to that place or as far as *Lisbon*. The ship accordingly sailed under convoy of a man of war, in company with several other vessels, and when she came near *Lisbon*, fell in with a fleet of privateers, by which some of the other vessels were captured, and the ship in question put into *Lisbon* in obedience to a signal from the man of war, and there waited six months before she could safely proceed to *Cadiz*. In this case it is to be observed, that the master put into port to avoid an extraordinary and impending peril, and not merely as a matter of general caution to avoid the ordinary dangers always accompanying a state of warfare. And the expence thus incurred appears perfectly analogous to the cases of jettison, and to fall within the principle of the *Rhodian* law. For in this case, as the learned author observes, it is clear that there was a present and impending peril; and it is clear also, that the voyage was delayed, not by any accident, but by design, in order to avoid the peril.

11. The ordinance of the *Hanse-Towns* also mentions as an object of general average the expence of healing mariners wounded in the defence of the ship against the attack of pirates *(p)*: I have already mentioned the provisions made by the legislature of this country for persons of this description *(q)*: On the expence of repairing the injury done to a ship during a combat, foreign writers differ in opinion *(r)*. In the *Guidon*, an injury done to the cargo by the shot of cannon, is said to be a charge upon the merchant only *(s)*. In *England* it has been decided that neither the damage to a ship, nor the ammunition expended, nor

that in the *last* of these three foreign cases a period of nearly *seven* years elapsed between the *first* and the *last* sentence; in the *second* a period of nearly *ten* years, and in the *first* of almost *sixteen* years.

(p) Art 35.

(q) Part 2. ch. 4. sect. 12 & 13.

(r) 2 *Valin*, 168. *Pothier* traité des Avaries sect. 2. num. 144 & 154. *Emerigon*, tom. 1 p. 628.

(s) Ch. 5. art 4.

nor the expence of healing sailors wounded, in an action with an enemy, is an item of general average. The latter item however is made so by the Code de Commerce *(t)*.

12. By the law of most of the continental nations of *Europe* the injury done by one ship to another, or to its cargo, without fault in the persons belonging to either ship, is to be equally borne by the owners of the two vessels *(u)*; and this doctrine is advanced by many foreign writers; it therefore becomes necessary to observe here, that by the law of *England*, in the case of damage happening in this manner either to ship or cargo, by mere misfortune and without fault in any one, the proprietors of the ship or cargo injured must bear their own loss *(x)*. I have already mentioned that such a misfortune is considered as a peril of the sea. And in this respect the law of *England* agrees with the Civil Law *(y)*.

13. Hitherto we have considered the losses, which are to be compensated by general contribution, as being the price of safety, but this is not to be understood of absolute and perfect safety, by arrival and delivery at the port of destination. If temporary safety be obtained by the loss; if the ship survive the storm, or escape the enemy, and be afterwards cast away by another tempest, and goods be saved from the wreck, the clear value of the goods so saved must be contributory to the original loss, because without that loss even this diminished value would have had no existence *(z)*.

The abandonment of goods on these occasions, although it be the act of man, is not considered to be so far voluntary as to divest the property of the merchant, and give a title

(t) Taylor & others v. *Curtis*, 2 Marsh. 309. and 6 Taunton, 608. *Code de Com.* art. 400. N° 6.

(u) Ordin. of *Oleron*, art. 14. of *Wisbuy*, art. 26. 50. 67 & 70. *French* Ordinance, liv. 3. tit. 7. *Des Avaries*, art. 11. and *Valin* thereon, and *Bynkershoeck. Quæst. Jur. Priv.* lib. 4. ch. 18, 19, 20 & 21. But the law of *France* appears to have been altered in this respect, by the *Code de Commerce*, art. 407.

(x) See the case of *Buller* v. *Fisher*, ante, chap. 4. of this part, sect. 5.

(y) Dig. 9. 2. 29.

(z) Dig. 14. 2. 4. 1. *Vinnius in Peckium*, p. 246. 250.

title to any person, who may find and save them: but from such person the merchant may reclaim them on payment of salvage *(a)*; and if he is able to do so, their clear value is to be deducted from the contribution, or paid to the contributors.

It has been observed in a preceding part of this Treatise *(b)*, that when an entire ship is taken to freight by a merchant, the master must not take on board the goods of other persons without his consent: from whence I apprehend it will follow that if goods so wrongfully shipped be afterwards cast overboard to lighten the vessel, the merchant freighter ought not to contribute to the loss.

The *French* Ordinance in express terms excludes from the benefit of general average goods stowed upon the deck of the ship *(c)*: and the same rule prevails in practice in this country *(d)*. Goods so stowed may in many cases obstruct the management of the vessel, and except in cases where usage may have sanctioned the practice, the master ought not to stow them there without the consent of the merchant.

14. In the SECOND place let us consider the articles, that are to contribute to make good these losses. And these are all merchandize conveyed in the ship for the purposes of traffick, whether belonging to merchants, to passengers, to the owner, or to the master, of whatever kind, and however small be their weight *(e)* in comparison to their value *(f)*. For

(a) Dig. 14. 2. 2. 8. & 14. 2. 8. In *Tucker* v. *Cappes*, 2 Roll. Rep. 498. Mr. Justice *Dodderidge* said the proprietor of the goods may bring an action of trover against the finder.

(b) Ante, chap. 1. of this part, sect. 8. *See* Ordin. of *Wisbuy*, art. 46.

(c) Liv 3. tit. 8. *du Jet.* art. 13.

(d) So proved in the causes of *Myer & others* v. *Vander Deyl*, Guildhall Sit. before Lord *Ellenborough*, Ch. J. *Dec.* 1803, and of *Backhouse & another* v. *Ripley*, before *Chambre*, J. a short time before.

(e) Dig. 14. 2. 2. 2. 1 *Magens*, p. 62, 63. *Emerigon*, tom. 1. p. 639.

(f) Lord *Kaim* admits this rule, but controverts its propriety, and contends that the contribution should be according to *weight* and not *value*. *Principles of Equity*, page 116. I cannot think his arguments satisfactory.

For the contribution is made not on account of incumbrance to the ship, but of safety obtained. Therefore in this country bullion and jewels contribute according to their full value *(g)*.

For slaves also, who are considered as a species of merchandize, their proprietors must contribute according to their value *(h)*; although this dreadful traffick has not extended so far as to authorize the casting of these unhappy persons into the sea, and making their loss an object of contribution *(i)*. But as no estimation can be made of the value of the life of a free-man, neither passengers nor crew, are to contribute for their personal safety *(k)*. Neither in this country do the wearing apparel, jewels, or other things, belonging to the persons of passengers, or crew, and taken on board for their private use, and not for traffick, contribute on these occasions *(l)*. And *Emerigon* informs us that the same practice prevails in *France*, although the Ordinance of that country has not exempted these articles *(m)*. Both the ship, and the freight gained in the voyage, are now every where contributory, although formerly in some countries contribution was made for the value of one only *(n)*. But the owners do not contribute for the victuals or ammunition of the ship. In *France*, and many other of the continental states, contribution is made in some cases for the whole, in others for a moiety only of the value of the ship and of the gross freight *(n)*. In this country the owners contribute according to the value of the ship at the end of the voyage, and the clear amount of the freight or earnings of the voyage, after deducting the wages of the crew and other expences of the voyage. And it was held, that the freight

(g) 1 *Magens*, p. 62, 63.

(h) *Dig.* 14. 2. 2. 2.

(i) *Emerigon*, tom. 1. p. 610. 646.

(k) *Dig.* 14. 2. 2. 2.

(l) 1 *Magens*, p. 62, 63. But by the *Civil Law* the rule was otherwise, *Dig.* 14. 2. 2. 2. and a contrary rule is also laid down in the *Guidon*, chap. 5. art. 26. upon which however *Cleirac* observes that the Ordinances of different states vary.

(m) Tom 1. p. 645, &c.

(n) *See* the authorities cited by *Emerigon*, tom. 1. p. 648, &c. and Ordin. of *Wisbuy*, art 40. It is still so by the *Code de Com.* art. 401.

freight should contribute in respect of a loss occurring on an outward voyage, in a case where a ship was chartered out and home, and the freight was payable according to the quantity of the homeward cargo, and upon the ship's safe arrival. The question arose in an action brought by the ship owner on a policy of insurance on the ship for the outward voyage. The insurers were allowed to deduct the amount of a general average on the freight. The ship had arrived in safety in the *Thames* before the trial of the action *(o)*. The mariners do not contribute for their wages, except in the single instance of the ransom of the ship *(p)*. In this instance they are required to contribute in order to encourage resistance; in other instances they are exempted from contribution, lest the apprehension of personal loss should restrain them from the execution of the measures necessary to general safety; and the peril and extraordinary hardships endured by them on these disastrous occasions well entitle them to an exemption from further distress.

15. LASTLY, as to the mode of contribution. By the Civil Law, the goods cast overboard were valued only at their invoice price or prime cost *(q)*. A practice formerly prevailed in this country to adopt this valuation, if the loss happened before half the voyage was performed, but, if it happened afterwards, then to value the goods at the clear price, which they would have fetched at the place of destination *(r)*; and this practice still exists in many places abroad;

(o) Williams v. *London Insurance Company* 1. M. & S. 318. *See* also THE PROGRESS, *Barker*, 1 Edwards, 210. The last point in the judgment of the court, which relates to salvage on the freight upon recapture. But *see* also some sensible observations on the case of *Williams* v. *London Insurance Company*, in *Beneché*. p. 315, &c.

(p) Emerigon, tom. 1. p. 642. *French* Ordinance, liv. 3. tit 4. *Des Loyers des matelots*, art. 20. and *Valin* thereon, who gives this construction to the word *omnes* in the sentence "si navis a piratis re-" dempta sit, Servius Ofilius, La-" beo, *omnes* contribuere debere " aiunt." *Dig.* 14. 2. 2. 3.

(q) Dig. 14. 2. 2. 4.

(r) Malyne, p. 113. and *Molloy*, book 2. chap. 6. sect. 6. *Wellwood*, tit. 21.

abroad *(s)*; but here the last valuation is now adopted in all cases, where the average is adjusted after the ship's arrival at the place of destination, and appears best to agree with the nature of the subject *(t)*; for although, as between the proprietor and the insurer of goods, the prime cost is the only value, the contract of insurance in that case being a contract of indemnity against loss, and not a contract for the security of gain; yet in this case equity requires that the person, whose loss has procured the arrival of the ship at the place of destination, should be placed in the same situation with those, whose property has arrived at that place; which can only be done by considering *his* goods as having arrived there also. But if the ship in consequence of any misfortune to be sustained by general average, be compelled to return to its lading port, and the average be immediately adjusted, in this case the goods only contribute according to the invoice price: for the price of sale is unknown. And with regard to the loss of masts, cables, and other furniture of the ship, as the new articles purchased will in general be of greater value than the articles lost, it is usual to compound the difference by deducting one-third from the price of the new articles.

16. Supposing therefore a general average to be settled upon the ship's arrival at the port of destination, according to the principles before advanced, it is necessary in the first place to take an account of the several losses, which are to be made good by contribution: in the second place, to take another account of the value of all the articles that are to contribute; in which must be included the value of the goods, &c. thrown overboard, for otherwise the proprietors of those goods will receive their full value and pay nothing toward the loss. But as this will be most easily understood by an example in figures, I propose the following case; wherein the reader will suppose that it became necessary

(s) Emerigon, tom. 1. p. 654. *Vinnius in Peckium*, p. 220.

(t) It is also the rule of the Ordinance of *Wisbuy*, art. 39. And of the *Code de Com.* art. 402.

necessary in the *Downs*, to cut the cable of a ship destined for *Hull*; that the ship afterwards struck upon the *Goodwin*, which compelled the master to cut away his mast, and cast overboard part of the cargo, in which operation another part was injured; and that the ship, being cleared from the sands, was forced to take refuge in *Ramsgate* harbour to avoid the further effects of the storm.

Amount of Losses.	£.
Goods of A. cast overboard	500
Damage of the goods of B. by the jettison	200
Freight of the goods cast overboard	100
Price of a new cable, anchor and mast 300	
Deduct one-third 100	200
Expence of bringing the ship off the sands	50
Pilotage and port duties going into the harbour and out, and commission to the agent, who made the disbursements	100
Expences there	25
Adjusting this average	4
Postage	1
Total of losses	1,180

Value of Articles to contribute.	£.
Goods of A. cast overboard	500
Sound value of the goods of B. deducting freight and charges	1,000
Goods of C.	500
Of D.	2,000
Of E.	5,000
Value of the ship	2,000
Clear freight, deducting wages, victuals, &c. *(u)*	800
Total of contributory value	11,800

£. £. £. £.
Then 11,800 : 1,180 : 100 : 10:

That is, each person will lose 10 per cent upon the value of his interest in the cargo, ship, or freight.

	£.
Therefore A. loses	50
B.	100
C.	50
D.	200
E.	500
The Owners	280
Total	1,180, which is the exact amount of the losses.

Upon

(u) A writer of great practical experience, is of opinion, that the value of the provisions should be deducted not from the freight, but from the original value of the ship. Stevens on Average, p. 62.

Upon this calculation the owners are to lose 280*l.*, but they are to receive from the contribution 380*l.* to make good their disbursements, and 100*l.* more for the freight of the goods thrown overboard, or 480*l.* minus 280*l.*

They therefore are actually to receive - - - - -		£. 200
A. is to contribute 50*l.* but has lost 500*l.*; therefore A. is to receive - - - - - - - - -		450
B. is to contribute 100*l.* but has lost 200*l.*; therefore B. is to receive - - - - - - - - -		100
Total to be actually received - - -		£. 750

On the other hand C. D. and E. have lost nothing, And are to pay as before, *viz.* - - - - -	C.	£. 50
	D.	200
	E.	500
Total to be actually paid - - -		£. 750

which is exactly equal to the total to be actually received, and must be paid by and to each person in rateable proportion to be ascertained by another calculation, with which it is unnecessary to trouble the reader.

In the above estimate of losses I have included the freight of the goods thrown overboard, which appears to be proper, as the freight of these goods is to be paid, and their supposed value is taken clear of freight as well as other charges, although this article is omitted in the example proposed by *Pothier (x)*. But I find it charged in an adjustment of general average given by *Magens (y)*.

Before quitting this part of the subject, it seems proper to notice a case, analogous to general average. I allude to a case of salvage on capture and recapture. The question arose between the owner and charterer of a ship. The ship was chartered for a voyage out and home at a certain rate *per* ton *per* month, a certain sum being payable at the commencement of the voyage, and another at the end of a year, and the residue at a certain time after she should be reported at the Custom House, in *London*. The two first sums had been paid; the owner sued the charterer for the residue.

(*x*) *Traité des Avaries*, Num. 133. | (*y*) 1 *Magens*, 289.

residue. Salvage had been decreed on the ship and cargo; the latter and also the expence of obtaining restitution had been paid out of the price of the goods; and the charterer now claimed to set off those payments against the demand for the residue of the freight. The goods had been sold for a sum much less than the amount of the residue of the freight. Under these circumstances it was held that the charterer should not pay the salvage on the goods, but should pay a proportion of the expences of obtaining restitution. The grounds of the decision appear to have been, that the re-capture was no benefit to the charterer, inasmuch as it subjected him to the payment of the freight, and so was in effect beneficial to the owner only by enabling him to demand the freight; and therefore he ought to pay the whole salvage, both on the goods and ship; but the recapture having enabled the owner to report the ship at the Custom House, and thereby given him a right to the freight, whether the goods had been restored or no, the restitution of the goods was beneficial to the charterer, and therefore he ought to bear the expence of obtaining their restitution *(z)*.

17. By the Civil Law the master of the ship was required to take care to have the contribution settled, and to receive the sums to be contributed, and pay them over to the losers, and might sue and be sued for them, or might retain the goods for the sums to be contributed by their proprietors *(a)*. The same power of retaining the goods is given to the master by the *French* Ordinance, and even the further power of sale, under the authority of a magistrate, to the amount of the sums to be contributed *(b)*. But *Valin* acquaints us, that this power is never in fact exercised in his country *(c)*. Indeed, where contribution is to be made according to the price of the goods at the place of destination,

(z) Cox v. *May*, 4 M. & S. 152. What is here called the freight, is more properly the hire of the ship. See *Paul* v. *Birch*. ante. p. 172.

(a) Dig. 14. 2. 2. See *Wellwood*, tit. 21.

(b) Liv. 3. tit. 8. *du Jet.* art. 21.

(c) Tom. 2. p. 211.

tion, the exercise of this power is incompatible with the mode of adjustment. In this country, which has no peculiar forum established for these matters, but in which the practice of insurance is very general, it is usual for the broker, who has procured the policy of insurance, to draw up an adjustment of the average, which is commonly paid in the first instance by the insurers without dispute. In case of dispute, the contribution may be recovered either by a suit in equity *(d)*, or by an action at law *(e)*, instituted by each individual entitled to receive, against each party, that ought to pay, for the amount of his share. But a Court of Equity will not at the instance of the sufferer restrain the master from parting with the goods of the other merchants if he thinks fit to do so *(f)*. And in the case of a general ship, where there are many consignees, it is usual for the master, before he delivers the goods, to take a bond from the different merchants for payment of their portions of the average when the same shall be adjusted *(g)*.

It has been already observed, that in many foreign countries, some losses and expences are held to be the subject of general average, which are not so held in the law of *England*, the decisions of our courts being in general founded on a more strick conformity to the principle of the *Rhodian* law, and confining this general contribution to voluntary sacrifices, or to matters in the nature thereof, or consequent thereupon. But where an average had been settled on a different principle in a foreign port, to which the ship was destined, and the merchant had in order to obtain his goods been obliged to contribute to expences to which he would not have been contributory by the law of *England*, it being proved

(d) Shepherd & others v. *Wright*, Shower's Parl. Cas. 18.

(e) Marsham v. *Dutrey*, Select Cases of Evid. 58. *Birkley & others* v. *Presgrave*, 1 East, 220. *Dobson & others* v. *Wilson*, 3 Campbell, 480.

(f) Hallett v. *Bousfield*, 18 Ves. jun. 187.

(g) So deposed by a gentleman very conversant with this business in the case of *Myer & others* v. *Vander Deyl*. Guildhall Sit. before Lord *Ellenborough*, Ch. Jus. Dec. 1803.

proved that the average was settled according to the law of the country, the merchant was not allowed to recover back from the master the money so paid, although both the parties were *British* subjects, and the ship a *British* ship *(h)*. It had been previously decided that the holder of a respondentia bond upon goods in a *Danish* ship, who had contributed to general average, should recover the amount of his contribution from an *English* underwriter, on proof that such a security was contributory in *Denmark*, although it is not contributory in *England (i)*; and also that the owner of goods should recover on an *English* policy, a contribution to an average settled at *Pisa*, contrary to the *English* law, upon evidence that it had been usual for *English* underwriters to pay in similar cases *(k)*. These two decisions took place at nisi prius. On the other hand it had been decided by the Court of King's Bench, that a merchant who had paid a contribution to an average settled in *Portugal* should not recover the amount on a policy of insurance in the usual form, it not being proved that the adjustment was made according to the known law and usage of the foreign country, otherwise than by a recital in the decree of the foreign tribunal by which the average had been settled, and which the Court did not deem to be sufficient evidence of that fact *(l)*.

(h) Simonds & another v. *White*, 2 B. & C. 805.
(i) Walpole v. *Ewer*, Park, 629.
(k) Newman v. *Cazalet*, Id. 630.
(l) Power v. *Whitmore*, 4 M. & S. 141.

CHAPTER THE NINTH.

OF STOPPAGE IN TRANSITU.

1. WHEN goods have been shipped upon credit, and the consignee has become a bankrupt, or failed, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, allows him, in many cases to countermand the delivery, and before or at their arrival at the place of destination to cause them to be delivered to himself, or to some other person for his use. This is usually called *Stoppage in Transitu.*

2. This practice was first sanctioned and established in the Court of Chancery, by dismissing claims of the assignees of a bankrupt against a foreign merchant or his agent *(a)*, and in one case by a decree in favour of a foreign merchant plaintiff in that Court, the master having refused to deliver the goods either to him or to a trustee for the creditors of of the consignee *(b)*. Such a court, however, will not by injunction prevent the sailing of a ship in order to enable a consignor to resume his goods, which might be highly inconvenient to other shippers and persons, but leave him to his remedy at law, if the goods be improperly converted *(c)*; for this right of stopping in transitu has been frequently recognized and carried into effect by the courts of law. It is founded on principles of natural justice and equity. But the law of *England* is in this respect more favourable to the transfer of property, the great subject of commerce, and less attentive to the interest of the seller of goods, than the ancient civil law, or the modern law

(a) In the cases of *Wiseman* v. *Vandeput*, 2 Vern. 203; *Snee* v. *Prescot*, 1 Atk. 245.

(b) *D'Aguila* v. *Lambert*, Ambler, 399. It does not appear by the report of this case who the defendant was.

(c) *Goodhart* v. *Lowe*, 2 Jacob & W. 349.

law of many European nations, which is chiefly founded on the civil law *(d)*. For the civil law did not in general consider the transfer of property to be complete by sale and delivery alone, without payment or security for the price, unless the seller agreed to give a general credit to the buyer for it; but allowed the seller to reclaim the goods out of the possession of the buyer, as being still the seller's own property *(e)*. And by the general law of *France*, in the case of insolvency, "The seller, who has sold a thing, "and still lies out of the money, which he was to have for "it, if he finds the thing, that he sold, in the hands of the "buyer, may seize on it, and he is not obliged to share it "with the other creditors of the buyer. And it would be "the same thing, nay, and with much more reason, if the "owner of the thing had given" (delivered) "it to the "debtor to sell for him" *(f)*. Whereas by the general law of *England*, when *goods* have been delivered into the actual or constructive possession of the *buyer*, they cannot be reclaimed,

(d) Emerigon, speaking of the assignment of a bill of lading, says, "Mais ces sortes de cessions déferent au cessionnaire un simple "droit *ad rem*, qui lui donne pouvoir de requérir la délivrance "des effets indiqués, sans le mettre "en possession effective de la chose "même. Ainsi, que jusqu' à ce "que la tradition réelle ait été faite "dans un temps utile au porteur "du connoissement, il n'a qu'une "action personnelle, qui est subordonnée aux droits du tiers. Je "crois donc qu'une pareille cession "ne sauroit nuire, ni au privilege "du vendeur primitif, non payé "du prix, ni au privilege du donneur à la grosse, ni aux droits de "la masse des créanciers. Telles "sont nos régles. Le connoissement n'a jamais été considéré "parmi nous comme un papier "négociable. Le transport du titre "est une tradition feinte, qui "s'évanouit par la faillite on l'in"solvabilité notoire du cédant." *Emerigon*, tom. 1. p. 319, qnoted by Dr. *Robinson* in a note to the CONSTANTIA, 6 Rob. 325. See sect. 23. of this chapter.

(e) Quod vendidi, non aliter fit accipientis, quam si aut pretium nobis solutum sit, aut satis eo nomine datum, vel etiam fidem habuerimus emptori sine ulla satisfactione. *Dig.* 18. 1. 19. *See* also *id.* eod. tit. 53. and *Dig.* 19. 1. 13. 8. and 14. 4. 5. 18.

(f) Domat's Civil Law, book 4. tit. 5. sect. 2. art. 3. See also the notes of the same author on that article, and on book 3. tit. 1. sect. 5. art. 3. Where it appears that by the custom of some parts of *France* a person, who has sold goods expecting to be paid immediately, may, if he is not paid, retake the goods even out of the possession of a subsequent purchaser.

reclaimed *(g)*, although if found remaining unsold in the hands of an insolvent *factor*, they may be reclaimed, because a delivery to a *factor* does not of itself alter the property.

3. The law of *England*, however, will lend its aid to carry into effect the more enlarged rule of equity, which exists in another country, upon a transaction taking place there, as appears by the following case: By the law of Russia, "If, in case of unpaid debts or bankruptcies, any "body has reason to suspect that the debtor or bankrupt "has any thoughts of making the creditor lose, and there- "fore loadeth on board of ship or vessel goods or cargo, in "such a case the creditor is to give notice in town *(h)* to "the head Judge of the Court, (in districts to the Chief), "that the ship or vessel, or goods, or the whole cargo, "should be retained time enough until the full payment "is made to whom due." "In consequence whereof, and "by virtue of that law, if the seller or shipper, in case of "bankruptcies, can identify that the merchandize belong- "ing to him is in *Russia* in ships, warehouses, or wherever "they may be, in such a case the goods must be given "back to the sellers or shippers, *being their property*, and "cannot be brought in concurs" *(i)*, that is, into the general mass of the buyer's effects to be distributed among his creditors. Messrs. *Bohtlingk & Co.* of *St. Petersburgh*, in pursuance of directions from one *Crane*, of *London*, and as factors for him, shipped a cargo of *Russian* commodities at *St. Petersburgh* on board a ship *chartered by Crane*, and sent invoices thereof, and a bill of lading of part to him, but learning before the ship's departure that some bills, drawn by them on him in consequence of a previous transaction,

(g) In case of a sale of *land*, if the purchase money is not paid, the Court of Chancery considers the purchaser as a trustee for the seller. *Pollexfen* v. *Moore*, 3 Atkins, 272, and see *Blackburn* v. *Gregson*, 1 Brown's Rep. in Chancery, 420.

(h) Quære, Whether this should not be "towns" or "a town?"

(i) Mercantile Navigation Laws of *Russia*, published 25th *June* 1781, sect. 138.

action, were unpaid, *they procured from the master of the vessel bills of lading to their own order*, and sent them to a friend in *London*, and informed *Crane*, that he might have the bills of lading upon giving security to their friend for payment of the bills of exchange to be drawn for the amount of the goods, otherwise their friend would sell the goods on *Crane*'s account, and apply the proceeds in discharge of the bills of exchange. *Crane* in fact had committed an act of bankruptcy before any of the goods were shipped; on the arrival of the ship in *London*, his assignees demanded the goods of the master, and offered to pay the freight, &c. but the master delivered them to the friend of *Bohtlingk & Co.* on their account, in conformity to their indorsement of the bills of lading. Whereupon the assignees of *Crane* brought an action against the master: and the Court held, that the law of *Russia* in this case ought to prevail, although *Bohtlingk & Co.* had not actually taken the goods out of the ship, or instituted legal process for the recovery of them; considering the master's signature of bills of lading to their order to be equivalent to a stopping *in transitu* or re-delivery to them, and to have rendered it unnecessary for them to have recourse to the compulsory process of the law *(k)*.

In this case recourse was had to the law of *Russia* to sustain the right of the consignor, because the ship was understood to have been chartered by the consignee, and it was then supposed that the right of stopping *in transitu* did not apply to the case of goods shipped on board a vessel of that description. In another case, however, that arose out of the same transaction, wherein it appeared that the contract was not made in terms of letting and hiring, but contained only that the ship should proceed to *Petersburgh*, and there load from the factors of *Crane* a complete cargo, it was held that the shippers might stop the goods by the law of *England*, without the aid of the *Russian* law *(l)*.

4. But

(k) Inglis & others v. *Usherwood*, 1 East, 515.

(l) Bohtlingk v. *Inglis*, 3 East, 381.

4. But to return to the law of *England*. Let us consider, FIRST, in what cases generally goods may be stopped *in transitu*; SECONDLY, under what circumstances goods are deemed to be *in transitu*, and what not; and, LASTLY, by what acts the right of the consignor may be taken away, before the end of the transit.

FIRST. It should be observed that the act of stopping *in transitu* is an adverse act on the part of the consignor against the consignee. If a consignee after an act of bankruptcy deliver up the bills of lading to another person upon his undertaking to apply the proceeds of the goods in discharge of bills of exchange drawn for the price, and he accordingly receive the goods, he cannot retain them against the assignees of the bankrupt, although the original consignor afterwards approve of the arrangement: and it seems that the law would be the same, even if the person with whom such an arrangement should be made, were at the time an agent of the consignor *(m)*. But if the delivery of goods be countermanded by *the consignor*, the goods having been consigned upon credit, and *the consignee having failed or become bankrupt*, it is the duty of the master to obey the countermand, and deliver the goods, not to the consignee, but to the order of the consignor. Such countermand and substitution of a new consignee are most easily effected, if the bill of lading is originally made for delivery to the order of the consignor, because in that case the consignor may, if he has reason to suspect the failure, or is afterwards apprized of it, send another part of a bill of lading to a correspondent at the port of destination, indorsed in blank, or for delivery to him. But the countermand may also be made, in the event before-mentioned, if the consignee is originally named in the body of the bill of lading *(n)*. For the right of stopping *in transitu* does not depend upon a supposition that the property has not passed from the consignor, but on the contrary

(m) *Siffken & another* v. *Wray*, 6 East, 371.

(n) The assignees of *Burghall* v. *Howard*, 1 Hen. Bla. 365. note *a*.

contrary is founded on an admission, that the property has become vested in some other person. No question can ever be made upon the right of a man to seize his own goods: but the question in cases of stoppage *in transitu* generally is, whether under the circumstances the consignor may devest the property which has passed to another, and revest it again in himself *(o)*.

5. A person abroad, who in pursuance of orders sent by a merchant of this country, purchases goods on his own credit of others, whose names are unknown to the merchant, and who charges the merchant a commission on the price, and consigns them to him, is a consignor within the meaning of this rule; in reality he is the vendor, and the consignee the vendee *(p)*. So also is a person who sends goods to be sold on the joint account of himself and the consignee *(q)*. Even an alien enemy who had shipped a cargo to a *British* merchant under a *British* licence has been allowed to stop the goods by his agent on their arrival in *England*: the licence being held to give legality to all the consequences of the sale *(r)*. But a person who becomes surety for the consignee, by accepting bills drawn for the price of goods by the vendor, is not a consignor within this rule, although the bills be sent through his hands to the consignee *(s)*.

6. If the consignor indorse and transmit the bill of lading in pursuance of an agreement, and in trust to indemnify against acceptances, or the like, he cannot countermand the delivery, and take back the goods, while the trust and object of the consignment remain unsatisfied; nor must the master re-deliver them to him *(t)*. So if goods be sent by order of the consignee, on his account and at his risk, and the

(o) See Mr. Justice *Buller's* opinion in *Lickbarrow* v. *Mason*, 6 East, 27, 28.

(p) *Fiese & another* v. *Wray*, 3 East, 93.

(q) *Newsom & another* v. *Thornton & another*, 6 East, 17.

(r) *Fenton & another* v. *Pearson and another*, 15 East, 419.

(s) *Siffkin & another* v. *Wray*, 6 East, 371.

(t) *Haille* v. *Smith & another*, 1 Bos. & Pul. 563.

the consignor draw bills of exchange upon him for the price, and indorse and transmit the bill of lading, the consignor cannot take possession of the goods at the place of destination and insist upon immediate payment as the condition of delivering them, the consignee being willing to accept the bills, *and not having failed in his circumstances (u)*.

6. *b.* This subject has received much illustration from a judgment delivered by the learned judge of the Court of Admiralty, whose opinion coincides entirely with what has been here advanced. A ship having been taken on a voyage from *Cette* to *Copenhagen*, some brandy found on board was claimed in the Court of Prize on behalf of a Mr. *Kye* of the latter place. The consignor, I apprehend, was an enemy, and *Kye* a neutral. The question was, whether the brandy was the property of *Kye?* The documents were not all before the Court in the first instance; but the material facts appear to have stood thus:—The consignor at *Cette* had received orders from *Kye* to send him a quantity of brandy, for which he was to draw on a Mr. *Reinke*; and the letter of orders expressed a wish that the brandy should not be shipped before *April*. The brandy was in fact shipped in *January* or *February*, and bills drawn on *Reinke* about that time. By the bill of lading the brandy was expressed to be shipped on the account and risk of *Kye*, and to be delivered to him. Before the ship's departure the consignor appears to have received some information, from which he inferred that *Kye* had stopped payment, and he took the master of the ship before a magistrate, and there caused the following indorsement to be made on the bill of lading: "That whereas the master cannot deny that he has "received one hundred hogsheads of brandy for Mr. *Hans* "*Kye*; but as the interest of the shipper demands that "they should not be delivered to Mr. *H. Kye*, the master "is prohibited from delivering them to him, but he is "directed

(u) *Walley* v. *Montgomery*, 3 East, 585.

" directed to deliver them to Mr. *Ryberg*." A letter was probably written about the same time to *Ryberg*, desiring him to take possession of the brandy; a letter was afterwards written to the same person revoking such order, and saying that *Kye* had ordered the drafts to be accepted, and that the intelligence on which the consignor had acted was erroneous, for not *Kye*, but a Mr. *Kuhl*, had stopped payment. In fact *Reinke* did not at first accept the drafts for want of orders from *Kye*, which seems to have been owing to the shipment having been made earlier than *Kye* expected. The following observations, which form a part of the very learned judgment delivered on this occasion, are extremely apposite to the subject of the present chapter. " The revocation in this transaction was not explained, " but was expressed in absolute terms; and I am clearly " of opinion, that if Mr. *Kye* had been an insolvent person, " it would have amounted to a complete and effective " revendication of the goods. But if the person, to whom " they are consigned, *is not* insolvent; if, from misinforma- " tion or from excess of caution, the vendor has exercised " this privilege prematurely, he has assumed a right that " did not belong to him, and the consignee will be entitled " to the delivery of the goods, with an indemnification for " the expences that may have been incurred. In the law " of *England*, as far as I can collect it, and in all books " into which I have looked, it is not an *unlimited* power " that is vested in the consignor, to vary the consignment " at his pleasure in all cases whatever. It is a privilege " allowed to the seller, for the particular purpose of pro- " tecting him against the insolvency of the consignee. " Certainly it is not necessary that the person should be " actually insolvent at the time. If the insolvency happens " before the arrival, it would be sufficient, I conceive, to " justify what has been done, and to entitle the shipper " to the benefit of his own provisional caution. But if the " person *is not* insolvent, the ground is not laid, on which " alone such a privilege is founded. Then, if Mr. *Kye*

" has proved insolvent, the shipper will have exercised his " privilege; but if he is not insolvent, and has actually " provided for the payment of the goods, he will be entitled " to the delivery; unless it can be shewn that the right of " the shipper extends farther than I have stated it, and " that it amounts to an unlimited right to vary the con- " signment at pleasure. Where goods are shipped without " orders, such a right exists. The seller, if he may be so " described, retains an absolute power over them, for there " is no purchase. But when orders have been received " and executed, and delivery has been made to the master " of the ship, and bills of lading signed, the seller is *functus* " *officio*, except in the peculiar case in which he is again " reinstated by the privileges of the *vendeur primitif*. That " will make it a matter of fundamental importance, that " the letters containing the original order should be pro- " duced. The mercantile law I take to be clear and distinct, " that the seller has not a right to vary the consignment, " except in the case above stated. The mischief and in- " convenience that would ensue on a contrary supposition " are extreme. The goods might be put on board, and " might lie at the risk of the consignee for two or three " months; and if the consignor could come, and resume " them at pleasure, it would place the consignee in a " situation of great disadvantage, that he should be ex- " posed to the *risk* during such a length of time, for an " object which might be eventually defeated at any moment, " by the capricious or interested change of intention in " the breast of the consignor. It would be to expose the " consignee altogether to the mercy of the seller."

The learned Judge then proceeds to quote three cases from *Emerigon (x)*, in each of which a *French* court had ordered goods to be delivered to the original consignee, notwithstanding a change of destination by the consignor: and

(x) The learned Judge remarked, that he thought the law of *France* very important to the case before him, being a *French* consignment.

and then adds, "These cases I consider to be a clear exposition of the law, that persons having accepted orders, and made the consignment, have not a right to vary that consignment, *except in the sole case of insolvency.* The alteration may be made provisionally without actual insolvency; but if the insolvency does not take place, the act which has been done is a mere nullity; and the seller has exercised a power to which the law does not ascribe any legal effect." In the result the goods were restored to *Kye (y).*

7. This right of stopping goods *in transitu* does not belong to a person who had only a lien upon them without a property in them. And therefore if a fuller or dyer, who has fulled or dyed cloths, and who is not obliged to part with the possession of them until the price of fulling or dying them is paid, put them on board a ship for delivery to his employer in pursuance of his orders, and the employer fail, the fuller or dyer cannot countermand the delivery, because his lien and right to retain the cloths ceased, as soon as he parted with the possession of them *(z).*

8. A consignor may exercise this right, although a part of the price of the goods has been paid by the consignee *(a)*; or a bill of exchange has been accepted by him for the whole, and indorsed over to a third person *(b).* And an usage for land-carriers to retain goods as a security for the general balance of account due from the consignee, will not prevent the consignor from reclaiming them out of their hands, upon paying the price of the carriage of the particular goods only *(c).* Nor will a similar usage, when the carriage is to be paid by the consignor, authorize the carrier to detain goods from the consignee who has paid the price of them *(d).*

9. SECONDLY.

(y) The CONSTANTIA, *Henrickson*, 6 Rob. 321.

(z) *Sweet & another* v. *Pym*, 1 East, 4.

(a) *Hodgson* v. *Loy*, 7 Ter. Rep. in K. B. 440.

(b) *Fiese & another* v. *Wray*, 3 East, 93.

(c) *Oppenheim & another* v. *Russel*, 3 Bos. & Pull. 42.

(d) *Butler* v. *Woolcot*, 2 Bos. & Pull. N. R. 64.

9. Secondly. Goods are deemed to be *in transitu* not only while they remain in the possession of the carrier, whether by water *(e)*, or land *(f)*, and although such carrier may have been named and appointed by the consignee; but also when they are in any place of deposit connected with the transmission and delivery of them, and until they arrive at the actual or constructive possession of the consignee.

10. If goods are sent by sea to a certain port to be forwarded from thence by land to the residence of the consignee, and upon the ship's arrival at the port are delivered to a wharfinger, who receives them on the part of the consignee, to be forwarded to him accordingly; they are subject to this right of the consignor in the hands of the wharfinger *(g)*; and the law is the same in case of delivery to a packer appointed by the buyer *(h)*; unless the warehouse of the packer be used by the buyer as his own, and be the place of the ultimate destination of the goods *(i)*.

11. So, as I have before observed, the master of a ship, chartered wholly by the consignee, is now held to be a carrier in whose hands goods may be stopped *(k)*. But where a ship had been hired by the consignee for a term of years, and was fitted out, victualled, and manned *by him*, and goods were put on board thereof, to be sent *by him* on a mercantile adventure, for which he had bought them; it was held that the consignor could not stop them; the consignee being in that case the owner of the ship *pro tempore*, and the delivery of the goods on board thereof being equivalent to a delivery into a warehouse belonging to him,

(e) Stokes v. *La Riviere*, tried before Lord *Mansfield*, at Guildhall, cited 3 Ter. Rep. K. B. 466.

(f) Hunter & another v. *Beale*, tried before Lord *Mansfield*, at Guildhall, cited 3 Ter. Rep. K. B. 466.

(g) Mills & another v. *Ball*, 2 Bos. & Pull. 457.

(h) Hunt & others v. *Ward*, K. B. cited 3 Ter. Rep. K. B. 467.

(i) Scott & others v. *Pettit*. 3 Bos. & Pull. 469.

(k) Bohtlingk v. *Ingliss*, 3 East, 381.

him, and the transit being in effect a transit *from* and not *to* him *(l)*.

12. In a case of goods sent by a waggon, which arrived at the inn in *London*, where the waggon usually put up, and were there attached by a creditor of the vendee, according to the custom of *London*, and which in that situation were claimed by his assignee, he having become bankrupt, and marked by the assignee, it was held that the vendor could not afterwards countermand the delivery: the goods being deemed to have arrived at the end of their destined journey; and the assignee to have done that, which was equivalent to taking actual possession; the removal of the goods being impracticable on account of the attachment *(m)*. The question arose between the vendor and the assignee, who after a claim made by the vendor obtained possession of the goods, the attachment being taken off. An attachment of this sort laid upon goods in the hands of a wharfinger does not defeat the right of the consignor *(n)*.

A delivery of goods to an agent of the buyer residing at a sea-port, with whom they are to remain until the buyer sends orders for shipping them to a foreign country, is in effect a delivery to the buyer *(o)*. So if a buyer having no warehouse of his own, be in the habit of leaving goods at the waggon office until he gives orders for their shipment, or removal, the transit ends upon their arrival at the waggon office *(p)*. In each of these cases, as between the buyer and the seller the goods have arrived at the end of their journey. The subsequent shipment would be the commencement of a new journey under the direction of the buyer *(o)*.

13. Where

(l) Fowler & another v. *M'Taggart & others*, tried before Mr. Justice *Grose*, at *Bristol*, and cited 7 Ter. Rep. K. B. 442. and in the case mentioned in the text.

(m) Ellis v. *Hunt*, 3 Ter. Rep. K. B. 464.

(n) Smith & another v. *Goss*, 1 Camp. 282.

(o) Dixon & others v. *Baldwen*, 5 East, 175. See also *Leeds & another* v. *Wright*, 3 Bos. & Pull. 320.

(p) Rowe & another assignees v. *Pickford & another*, 1 Moore 526. and 8 Taunton 83.

13. Where a ship, which ought to have performed quarantine, came into port without doing so, and the assignees of the consignee, who had received the bill of lading, but had become bankrupt, went on board immediately, and claimed the goods, and opened some of the chests, and put a person on board to keep possession, and the ship being on the same day ordered out of port to perform quarantine, an agent of the consignor, having received another bill of lading, claimed the goods of the master during the performance of quarantine: It was held by Lord *Kenyon*, at the trial of an action brought by the consignor against the assignees, who afterwards obtained possession of the goods, that the right of the consignor to stop the goods *in transitu* existed when the claim was made on his behalf, because the voyage was not at an end until the performance of the quarantine, and the consignee had no power to devest the right of stopping *in transitu*, by taking possession before the conclusion of the voyage. The plaintiff obtained a verdict, and the opinion of his Lordship was afterwards sanctioned by the Court of King's Bench on an application for a new trial. The doctrine of this case is in exact conformity to the tenor of a bill of lading, by which the master always engages to deliver the goods *at* the place of destination, and which therefore gives no authority to the consignee to demand them *before* their arrival at that place *(q)*.

14. By an act of parliament made for securing the duties payable upon the importation of wine, the proprietor, importer, or consignee, was required, within *twenty* days after the ship has been entered at the Custom House, to make an entry of the wine, pay the duties, and land the wine; upon failure the wine was to be conveyed to the King's warehouse, and if the duties were not paid within *three* months, to be publicly sold, to defray the duties and expences, and the overplus (if any) to be paid to the proprietor or other person

(q) Holst v. *Pownal & another*, 1 Espin, N.P. cases, 242.

person authorized to receive the same *(r)*. This statute gave occasion to a question upon the subject now under consideration. A quantity of wine arrived here consigned to *Leyland & Cragg*, by whom it was ordered, and who had accepted a bill drawn upon them for the amount. They did not enter, or pay the duties for it within *twenty* days, but before the expiration of that period became bankrupts, and the bill accepted by them was not paid. The wine was conveyed to the King's warehouse according to the statute, The assignees of *Leyland & Cragg* first, and after them an agent of the consignor, claimed the wine of the officers of revenue within the *three* months. The wine however was not delivered to either party, but was publicly sold at the expiration of the *three* months, and the assignees of *Leyland & Cragg* brought an action against the broker for the overplus price. The question in the cause therefore was, whether the claim made by the agent of the consignor was a legal stoppage of the goods *in transitu, before they had come to the possession of the consignee*; and Lord *Kenyon*, before whom the cause was tried, held it to be so, and the plaintiffs failed in their suit *(s)*. This doctrine was recognized and adopted by Lord *Ellenborough* in a subsequent case relating to wine sent to the King's warehouse under this statute, which will be more fully stated for another purpose in a subsequent part of this chapter.

In these last cases the claim was made before the time arrived at which the consignee had a right to take actual possession. In the case of the goods brought by the waggon to the inn, that time was arrived: the exercise of the right was alone prevented by an extrinsic circumstance wholly unconnected with the conveyance or delivery of the goods.

15. Where the master had begun to unload, and had actually delivered part of a cargo of grain, a bill of exchange

(r) 26 *Geo.* 3. *c.* 59. *sect.* 4. This section is repealed by the 6 *Geo.* 4. *c.* 105. *s.* 179, and a general provision introduced by *c.* 107. *s.* 16.

(s) *Northey & another* v. *Field*, 2 Espin. N. P. cases, 613.

change having been drawn and accepted for the whole, it was determined that the consignor's right to countermand was wholly at an end, and could not be exercised over the residue of the cargo *(t)*. But where a carrier having landed a part on a wharf of the consignee, resumed it, and took the whole to his own premises in order to secure his own demand for freight and carriage, this was held not to be such a delivery as to put an end to the right of the consignor *(u)*. And where the master had actually delivered the goods to the person by whom they were ordered, and at whose risk they were to be imported, it was held that the consignor could not reclaim them, although the bill of lading was for delivery to the consignor, and was unindorsed, and the bill of exchange drawn for the price had been dishonoured *(x)*. In this last case the propriety of the delivery as between the consignor and the master seems doubtful. If goods are delivered to a vendee at a wharf, and shipped there in his name with the assent of the vendor, no subsequent stoppage can take place *(y)*. But if a carrier after notice from the vendor to stop goods, does by mistake deliver them to the vendee, the right of the vendor will not be taken away, even though, owing to the vendee's having become bankrupt, the goods may have passed into the hands of his assignees *(z)*.

It sometimes happens that goods intended for exportation are sold under a contract to deliver them on board a vessel named by the buyer. In such a case the seller may retain his property in the goods by taking a receipt for them from the person in charge of the ship, so long as he keeps this receipt in his own hands, the shipment not being under such circumstances a complete delivery to the buyer *(a)*. He

(t) Sluby & another v. *Heyward & others*, 2 Hen. Blac. 504.

(u) Crawshay & others v. *Eades*, 1 B. & C. 181.

(x) Coxe & others v. *Harden & others*, 4 East, 211.

(y) Noble v. *Adams*, 7 Taunton, 59. and 2 Marshall, 366.

(z) Litt & another v. *Cowley & others*, 7 Taunton, 169. and 2 Marshall, 457.

(a) Craven & another v. *Ryder*, 6 Taunt. 433. and 2 Marshall, 127.

He will also retain his right to the goods, at least as against the master of the ship, if he demand a receipt in his own name at the time of the shipment, although the receipt be not delivered, and the master afterwards sign and deliver a bill of lading to the buyer, who becomes insolvent before the departure of the ship *(b)*.

15. *b.* Goods are frequently sold upon credit while they remain in the custody of a warehouseman, who is to deliver them to the buyer upon receiving an order for that purpose from the seller. In such cases the custody of the warehouseman has been sometimes considered as in the nature of a transit; and questions have arisen as to the power of the seller to countermand an order that may have been received by the warehouseman, upon discovering the insolvency of the buyer. Upon such a question it is important to ascertain whether, according to the nature and subject-matter of the contract, any other act on the part of the seller is to precede the actual delivery of the goods. If nothing is to precede it, and the order has been handed by the buyer to the warehouseman, and he has made the usual entry in his books changing the name of the proprietor *(c)*; or even if he has not made such entry *(d)*; the handing of the order to the warehouseman is a constructive taking possession by the buyer, and the order cannot be countermanded. *A fortiori* it cannot be countermanded if the buyer has actually removed from the warehouse a part of an entire quantity of goods sold at one fixed and entire price *(e)*. But if any thing is to be previously done on the part of the seller to ascertain the amount of the price, or to ascertain and perfect the specific subject of the sale, such for instance as weighing the goods *(f)*, an order for delivery may be countermanded

(b) *Ruck & Hatfield*, 5 B. & A. 632.

(c) By Lord *Ellenborough*, Ch. J. in *Harman & others* v. *Anderson & others*, 2 Camp. 243.

(d) In the same case afterwards by the Court, Ibid.

(e) *Hammond & others* v. *Anderson*, 1 Bos. & Pull. N. R. 69.

(f) *Withers & others* v. *Lyp & another*. Holt's N. P. 18.

manded before such previous act has been done. Thus where a person contracted to sell all his starch then lying at the warehouse of another, at a certain price per hundred weight to be paid for by a bill of exchange, and a certain number of days was allowed for the delivery, and the seller wrote an order to the warehouseman, to weigh and deliver all his starch to the buyer, and the buyer handed the order to the warehouseman, who weighed a part which the buyer removed, and then the buyer failed before the residue was weighed, it was held that the seller might lawfully countermand the delivery of the residue *(g)*. So where a quantity of oil in casks was sold, and according to the course of trade, the casks were to be searched by the seller's cooper, the quantity of impure matter to be ascertained by a person attending on behalf of both parties, and the casks to be filled up at the seller's expence, it was held that the order, which had been delivered to the warehouseman, might be countermanded before these things were done *(h)*. On the other hand upon a sale of ten tons of oil, being part of forty tons contained in one cistern, where nothing remained to be done except to draw off the ten from the forty, it was determined that the seller could not countermand the order after it had been placed in the hands of the warehouseman *(i)*. But although something may remain to be done, so that the delivery be not complete, yet if the buyer sell the goods to a third person, and the wharfinger certify to such third person that he has transferred the goods to his account, who thereupon pays the price, the wharfinger thereby makes himself responsible to the third person, and cannot defend

(g) *Hanson & another* v. *Meyer*, 6 East, 614.

(h) *Wallace & others* v. *Breeds & another*, 13 East, 522.

(i) *Whitehouse & others* v. *Frost & others*, 12 East, 614.

The several cases of *Hinde* v. *Whitehouse & another*, 7 East, 558. *Hurry & others* v. *Mangles & others*, 1 Camp. 452. *Rugg & others* v. *Minett & others*, 11 East, 210. *Zagury* v. *Furnell & another*, 2 Camp. 240. and *Stoveld* v. *Hughes & another*, 14 East, 308. may be consulted with advantage by the reader. They are not quoted in the text, because they seem to be questions upon the vesting of the property.

defend himself against his claim under the right of the first seller to stop the goods *(k)*.

16. LASTLY, we are to consider by what acts the right of the consignor may be taken away, before the end of the transit.

Since the publication of the former editions of this book, this subject has received the attention of the legislature, and acts of parliament have passed *(l)*, by which the matter will in many cases be governed in future. The legislative enactments are in part confirmatory of the common law, and in part an important alteration of it. The following abstract of them will, it is hoped, be found correct and useful:

The person in whose name goods are shipped is to be deemed the true owner thereof, so far as to entitle the consignee to a lien thereon in respect of any money or negociable security advanced by him to such person, or received by such person to his use, *if he has not notice* by the bill of lading or otherwise, at or before the advance or receipt that such person is not the actual and *bonâ fide* owner of the goods; and such person shall be taken for the purposes of the act to have been entrusted with the goods for the purpose of consignment or of sale, unless the contrary be made to appear *(m)*. So also, a person intrusted with and in possession of a bill of lading, or of any of the warrants, certificates or orders, mentioned in the Act, is to be deemed the true owner of the goods described therein, so far as to give validity to any contract or agreement made by him for the sale or disposition of the goods, *or the deposit or pledge thereof*, if the buyer, disponee or pawnee, *has not notice* by the document or otherwise, that such person is not the actual and *bonâ fide* owner.

(k) Hawes & another & Watson & another, 2 B. & C. 540.

(l) 4 *Geo.* 4. c. 93. and 6 *Geo.* 4. c. 94. The last Act was passed to alter and amend the first, and therefore the enactments of the last only are abridged in the text.

(m) 6 *Geo.* 4. c. 94. s. 1.

owner of the goods *(n)*. But if such person deposit or pledge the goods as security for a pre-existing debt or demand, he who so takes the deposit or pledge without notice shall acquire such right, title or interest, and no further or other than was possessed by the person making the deposit or pledge *(o)*. And further, any person may contract *for the purchase* of goods with any agent entrusted with the goods, or to whom they may be consigned, and receive and pay for the same to the agent, *notwithstanding he shall have notice* that the party with whom he contracts is an agent, if such contract and payment be made in the ordinary and usual course of business, and he has not at the time of the contract or payment, notice that the agent is not authorized to sell or to receive the price *(p)*. Also, any person may accept any goods, or any such *document* as aforesaid, on deposit or pledge from any factor or agent, *notwithstanding he shall have notice* that the party is a factor or agent; but in such case he shall acquire such right, title or interest, and no further or other than was possessed by the factor or agent at the time of the deposit or pledge *(q)*.

It is, however, provided, that the act shall not prevent the true owner of the goods from recovering them from his factor or agent, before a sale, deposit or pledge, or from the assignees of such factor or agent, in the event of his bankruptcy: nor from the buyer the price of the goods, subject to any right of set-off on the part of the buyer against the factor or agent: nor from recovering the goods deposited or pledged upon repayment of the money, or restoration of the negociable instrument advanced on the security thereof to the factor or agent; and upon payment of such further money, or restoration of such other negociable instrument (if any) as may have been advanced by the factor or agent to the owner, or on payment of money equal

(n) 6 *Geo.* 4. *c.* 94. *sect.* 2.
(o) Id. *sect.* 3.
(p) Id. *sect.* 4.
(q) Id. *sect.* 5.

equal to the amount of such instrument: nor from recovering from any person any balance remaining in his hands as the produce of a sale of the goods, after deducting the money or negociable instrument advanced on the security thereof. And in case of the bankruptcy of the factor or agent, the owner of the goods so pledged and redeemed shall be held to have discharged, *pro tanto*, his debt to the estate of the bankrupt *(r)*.

I am not aware that any case has hitherto been decided upon the construction of these enactments. They appear, as I have before observed, to be partly a confirmation, and partly an alteration of the law: and as a knowledge of the former state of the law is often very useful, even after an alteration has been made, it has been thought advisable to retain the contents of the last edition on this subject, with a reference to some subsequent decisions.

The bill of lading in all its usual forms contains the word "*assigns*," but it will be proper to advert again to the different forms in common use. Sometimes it is made for delivery to the consignor by name, or assigns; sometimes to order, or assigns, not naming any person; and at other times to the consignee by name or assigns. In the two first cases, the consignor either transmits it without any indorsement, or indorses his own name generally upon it, without mentioning any other person; or indorses it specially for delivery to a person named by the indorsement. Occasionally too, particular conditions or restrictions respecting the delivery are mentioned in the indorsement. It will be immediately perceived that in this respect there is a strong resemblance between this instrument and a promissory note. The mere possession of a promissory note made payable to another person and not indorsed by him, gives the holder no power to indorse over the note. Nor ought the mere possession of a bill of lading, made for delivery to the consignor and not indorsed by him, to induce any

(r) 6 *Geo.* 4. *c.* 94. *s.* 6.

any one to believe that the holder is authorized to dispose of the goods. On the other hand, if the bill of lading be originally made for delivery to the consignee; or being made for delivery to the consignor or assigns, or to order or assigns, be indorsed by the consignor, either to a third person by name, or generally without designating any person, it may on the first view be thought that the person named in these two first cases, or who is the holder of the instrument in the latter case, has authority to dispose of the goods as he may think proper.

In what follows the word *consignee* will be used to denote such a person, and the bill of lading spoken of is to be understood as falling within one of these three descriptions last mentioned, unless the contrary is pointed out.

In point of practice it frequently happens that the consignee, having received the bill of lading, sells the goods for a valuable consideration, or raises money upon them, before their arrival, and delivers over the bill of lading to a third person, who is wholly ignorant of the nature or terms of the consignment, and does not know that the consignee is not absolutely entitled to receive and dispose of them; under such circumstances a very important question of law has arisen upon the right of the consignor to countermand the delivery as between him and the person to whom the bill of lading has been thus delivered, without any fraud or collusion.

Of the frequency of the practice to assign bills of lading among merchants, and the conveniency of the practice in many cases, there is no doubt; but not every mercantile practice of frequent use and even of general convenience is, or ought to become, in all its consequences, a part of the law of the land; for if such a rule were adopted, the law must in many cases depart from its own principles, and vary with the varying fashions of the times; nevertheless, the law of *England* does adopt into its own bosom many of the ancient customs and usages of merchants, and stretch forth its arm to assert and maintain them, when they are found

found consonant to legal reason and legal wisdom, and most especially when they are calculated to promote honesty and to prevent fraud. And upon the subject now under consideration, the question is, what extent of legal right the act of the consignee confers upon his assignee *(s)*. The earliest mention of this subject in our law books is in the case of *Evans* v. *Marlett (t)*, in which *Holt*, Chief Justice, said, "the consignee of a bill of lading has such a "property that he may assign it over." And *Shower* said, "that it had been adjudged so in the Exchequer." But in this case the question upon the effect of such an assignment was not properly before the Court, and does not appear to have been discussed or argued; and the case supposed to be referred to by *Shower* has not been found. In the case of *Snee* v. *Prescott*, before cited, the right of the pawnee of the bill of lading as against the consignor was not noticed or insisted upon. In the case of *Appleby* v. *Pollock*, which was tried before Chief Justice *Lee* at Guildhall *(u)*, it appeared that one *Brand* shipped certain goods at *Leith*, and consigned them to one *Stratton* in *London*. *Stratton*, as soon as he received the bill of lading, by indorsement thereon assigned the goods to the plaintiff for 160*l*. and soon afterwards became a bankrupt. *Brand*, hearing of the bankruptcy, took process out of some Court in *Scotland* to attach the goods in the hands of *Pollock* the master of the ship: but the ship having left *Leith*, the process was executed at sea. Upon the arrival of the ship at *London*, the master refused to deliver the goods to the plaintiff *Appleby*, unless he would indemnify him against the

(s) According to *Emerigon*, the unpaid seller is not, by the law of *France*, affected by a transfer of the bill of lading. See before, sect. 2. of this chapter, page 365. note *d*.

(t) 1 Ld. Raym. 271. 12 Mod. 156. 3 Salk. 290. but the report in Salkeld does not contain this dictum.

(u) Trin. T. 21 *Geo.* 2. This case, which is here quoted from two manuscript notes taken by different persons, does not appear to have been noticed in any of the subsequent cases. In one of the notes the process is said to have issued out of the Admiralty Court in *Scotland*.

the process in *Scotland*, and thereupon *Appleby* brought the present action to recover the value of the goods. At the trial of the cause, the Chief Justice declared himself to be of opinion that the assignment gave the plaintiff a sufficient property to maintain the action, if under the circumstances he was entitled to do so. The general question upon the right of the consignor to stop the goods and countermand the delivery, as against an assignee of the bill of lading, does not appear to have been agitated: parol evidence was given, that by the law of *Scotland* if goods are arrested, the holder must give security not to part with them, and the defendant relied on the effect of the process, by which these goods were attached: as to which the Chief Justice said, "if the process could have attached "these goods, it could only have done so within the "jurisdiction of the Court, and it does not appear that "the place where the goods were attached was within the "jurisdiction of the Court, and it lay upon the defendant "to make that out." And the Chief Justice therefore directed the jury to find a verdict for the plaintiff to the value of the goods. In the case of *Wright* v. *Campbell (x)*, which arose on a consignment of goods to one *Swanwick*, who was the factor of the consignor, and who by indorsement assigned the bill of lading to a third person, Lord *Mansfield*, said, "If the goods are *bonâ fide* sold by the "factor at sea (as they may be where no delivery can be "given) the sale will be good: the vendee shall hold them "by virtue of the bill of sale, though no actual possession "is delivered; and the owner can never dispute with the "vendee, because the goods were sold *bonâ fide*, and with "the owner's own authority;" but the Court, thinking there was reason to believe the assignment to have been fraudulent, sent the cause to a second trial, in order that the

(x) 4 Burr. 2046. 1 Bla. Rep. 628. According to the report in Blackstone, Mr. Justice *Yates* expressed a doubt "whether an assignment of a bill of lading made "it negotiable in the same degree "as a bill of exchange."

the jury might determine that point. In the case of *Caldwell* v. *Ball (y)*, it was considered by the Court, that a bill of lading is assignable in its nature, and that by indorsement thereof the property vests in the assignee; but that case did not properly turn upon the effect of the assignment as between the consignor and the assignee; and was decided upon the ground that the defendant, the master of the ship, had discharged his duty by delivering the goods to the person, to whom the consignor had first indorsed the bill of lading, and who appeared upon the whole to have the better title; the right of stoppage *in transitu*, or the devestment of that right, not being in question. In the case of *Hibbert* v. *Carter (z)*, which happened very soon afterwards, and was a question of interest as requisite to sustain an action upon a policy of insurance, the Court thought that the indorsement of the bill of lading by the consignor to a third person absolutely transferred the property, until it appeared to have been made only for the purpose of binding the net proceeds as a security for a pre-existing debt, and that the consignor was not intended to be discharged from the debt, if the goods had perished on the voyage.

17. Shortly after this last determination, the question now under consideration was brought before the Court of King's Bench for decision as the point and hinge of the cause of *Lickbarrow & others* v. *Mason (a)*, in which case it appeared that Messrs. *Turing & Co.* had shipped goods at *Middleburgh* for *Liverpool*, by the order of one *Freeman*, of *Rotterdam*, and drawn bills of exchange upon him for the price, and taken from the master three bills of lading for delivery of the goods to order or assigns, two of which they indorsed in blank, and transmitted them together with an invoice

(*y*) 1 Ter. Rep. K. B. 205.
(*z*) 1 Ter. Rep. K. B. 745.
(*a*) 2 Ter. Rep. K. B. 63. The facts appear upon the plaintiff's evidence, to which the defendants demurred. See the very learned opinion delivered by Mr. Justice *Buller* in the House of Lords, 6 East, 21. *note*.

invoice to *Freeman* at *Rotterdam*, who sent them and the invoice to the plaintiffs at *Liverpool* in the same state in which he received them, that they might receive and sell the goods on his account, and drew bills of exchange upon them to nearly the amount. *Freeman* and the plaintiffs accepted the bills of exchange drawn upon them respectively; but between the ship's departure and her arrival at *Liverpool*, *Freeman* became a bankrupt and absconded, and *Turing & Co.* sent another of the bills of lading to the defendants, indorsed specially for delivery to them; and they thereupon obtained the goods from the master. *Turing & Co.* afterwards paid the bills of exchange drawn by them upon *Freeman*, and the plaintiffs paid those, which had been drawn upon them by *Freeman*. The Court, after solemn argument and deliberation, held that by an assignment made by the consignee *for a valuable consideration*, and without notice to the assignee that the goods were not paid for, the property was absolutely transferred to the assignee, and that the consignor was by such assignment deprived of the right to stop the goods *in transitu* which as against the original consignee he might have exercised. From this decision an appeal was made by writ of error to the Judges of the Courts of Common Pleas and Exchequer *(b)*, who reversed the judgment of the Court of King's Bench; holding that the assignment gave to the assignee no other right or title than that, which the consignee himself possessed, and consequently that the consignor had a right to stop the goods, and prevent their delivery to the assignee. This judgment was by a second writ of error brought before the House of Lords; but their Lordships, thinking the facts of the case were not laid before them in such a manner as to warrant a decision of the point of law, directed the cause to be tried again by a jury, in order to remedy that defect: It was accordingly tried again, and the Court of King's Bench, (at the head of which Lord *Kenyon* had in the mean time

(b) 1 Hen. Black. 357.

time been placed, and who had in another cause *(c)* expressed his approbation of the first judgment in this case, as being founded upon principles of policy and common honesty,) again decided the case without argument in conformity to the first decision of that Court; and in order that the question might again be carried to the other tribunals *(d)*, another writ of error was brought, but it was afterwards abandoned; and it is now the admitted doctrine in our Courts, that the consignee may, under the circumstances before stated, confer an absolute right and property upon a third person, indefeasible by any claim on the part of the consignor. At the second trial of this cause it was the opinion of the jury, and was stated to be so in the verdict, that by the custom of merchants, bills of lading expressing goods to have been shipped by any person to be delivered to order or assigns, are, before the ship's arrival, negociable and transferrable by him to any other person by his indorsing his name, and delivering or transmitting the same so indorsed to such other person: and that by such indorsement, delivery, and transmission to such other person, the property is transferred to such other person. And evidence to the same effect was given at a trial in a subsequent case *(e)*.

The right of parties may often depend upon the state of things at the time when the bill of lading is indorsed by the consignor; thus, where the consignor was indebted to the consignee on the balance of accounts, including bills of exchange still running, accepted by the consignee for him, it was held that the goods shipped on account of this balance could not be stopped by the consignor upon the consignee becoming insolvent before the bills of exchange were paid *(f)*.

17. *b.* The validity of an assignment is not confined to those cases, in which the assignee has no notice *that the goods*

(c) Solomons v. *Nissen*, 2 Ter. Rep. K. B. 674.

(d) 5 Ter. Rep. K. B. 683.

(e) Haille v. *Smith*, 1 Bos. & Pull. 563.

(f) Vertue & another v. *Jewell*. 4 Campbell. 31.

goods have not been actually paid for in money. If the assignee takes the assignment *bonâ fide* without notice of any such circumstances as would render the bill of lading not fairly and honestly assignable, he acquires a good title against the consignor. Goods sold are seldom actually paid for in money at the time of their shipment: in general a bill of exchange is drawn for the price:—If a person knowing that such is the transaction, and that the bill of exchange has been accepted, takes an assignment of the bill of lading fairly and honestly for a valuable consideration, before the money becomes payable, without any reason to know or apprehend that the consignee is likely to fail and not to pay the money in due course, the consignor cannot prevent the delivery of the goods. This has been solemnly decided in the Court of King's Bench. But if a person assists in contravening the actual terms of the sale on the part of the consignor, or his reasonable expectations arising out of them, or his rights connected therewith; if, for instance, he knows that the consignee is in insolvent circumstances; that no bill has been accepted for the price, or that being accepted it is not likely to be paid; he will stand in the same situation with the consignee, and his interposition under such circumstances being in fraud of this right of the consignor, will not be available to defeat it *(g)*. So if he intervenes after the purchase and makes himself a partner in the transaction with the first buyer, and engages as between them two to pay for the goods, he cannot prevent the exercise of this right, although he may previously have accepted bills drawn upon him by the buyer to a great part of the amount of the price *(h)*. A bill of lading was specially indorsed for the delivery of the goods to one *Voss*, if he should accept *and pay* a bill of exchange drawn upon him, and if not, then for delivery to the holder of the draft. *Voss* accepted the draft, and then indorsed the bill of lading

(g) Cuming v. *Brown*, 9 East, 506.

(h) Salomons v. *Nissen*, 2 Ter. Rep. in B. R. 674.

lading to another person for a valuable consideration, but he did not pay the draft when it became due. Lord *Ellenborough* held that this conditional indorsement made it incumbent on the purchaser to ascertain whether the condition had been actually performed; and that he had no title to the goods *(i)*.

18. But it was not understood that the consignee could in *all* cases by his subsequent indorsement, or delivery of the bill of lading to a third person, for a valuable consideration, and without fraud, defeat the right of the consignor to stop the goods. The nature and object of the consignment, and the character of the consignee, were attended to. If the goods were sent to the consignee as a purchaser, he might either sell or pledge them before their arrival, and if the bill of lading had by its form required and received the indorsement of the consignor, a second indorsement by the consignee was not thought necessary to perfect the transaction between him and the third person. This will appear by attending to the facts of the case of *Lickbarrow* v. *Mason*. *Freeman* the consignee was a purchaser from *Turing & Co.* the consignor; *Freeman* did not sell the goods to *Lickbarrow & Co.* the plaintiffs, but authorized them to receive the goods and sell them on *his* account, obtaining from them their acceptance of his bills of exchange on the credit of the bills of lading, and the expectation that they might repay themselves out of the proceeds of the goods. The bills of lading were for delivery to order or assigns, were indorsed generally by *Turing & Co.* the consignors, and were not again indorsed by *Freeman* the consignee.

19. On the other hand, if the goods were sent to the consignee as a factor, it was thought that his possession of the bill of lading could not in reason give him any greater power over ther goods before their arrival, than his actual possession of them afterwards would do: and as in the case of actual possession, although a factor might sell the goods and thereby

(i) *Barrow* v. *Coles*, 3 Campbell, 92.

thereby bind his principal, because his employment and authority are to sell; but could not pawn or pledge them, because he is not by his employment authorized so to do; so before the arrival of the goods, it was held that he could not divest the consignor's right to stop them, by indorsing or delivering over the bill of lading *as a pledge (k)*.

20. Indeed the indorsement of a bill of lading was not considered to be properly an actual transfer in itself, of the goods therein mentioned, but rather evidence, or an act raising a presumption of such a transfer; and consequently the object and legal effect of the indorsement might be ascertained by other circumstances. Therefore where a bill of lading was indorsed and transmitted by the consignor to an agent, without valuable consideration, to enable him to receive the goods therein mentioned, for the use of the consignor, in case the consignee should fail; it was doubted whether the agent could maintain an action at law for the goods in his own name. The Court appeared inclined to think, that he could not, but the cause in which the point arose, was decided on another ground *(l)*.

21. And as on the one hand, the indorsement or delivery of the bill of lading by the consignor, did not *necessarily* enable the consignee to devest the consignor's right of stopping *in transitu*, so on the other hand, it was thought there might be circumstances equivalent to such indorsement and delivery, which might enable the consignee to do this. As where *Thompson & Co.* sent goods from *Ireland* to *London*, to be sold by *Eustace & Holland* their factors there, and wrote to them to insure the goods, and sent them a bill of lading not indorsed, but having the names of *Eustace & Holland* on the back, and being applied to by them for an indorsement, answered by letter that if the bill of lading was not indorsed, it was a mistake, and they would send an indorsement;

(k) *Newsom & another* v. *Thornton & another*, 6 East, 17. See also *Martini* v. *Coles & others*, 1 M. & S. 140. *Shipley & others* v. *Kymer & others*, id. 484. *Solly & another* v. *Rathbone & others*, 2 M. & S. 298. *Cochran* v. *Irlam & others*, id. 301.

(l) *Coxe* v. *Harden*, 4 East, 211.

dorsement; upon which *Eustace & Holland* sold the goods; and it afterwards happening that they were unable to pay bills drawn upon them by *Thompson & Co.* on the general account, one *Dick* paid those bills for the honour of the drawers, and knowing all these transactions applied to them for an indorsement of the bill of lading, which they sent him; and *Dick* thereupon demanded the goods of the master of the ship, who refused to deliver them to him, but delivered them to the vendees of *Eustace & Holland*; upon this *Dick* brought an action against the master, which was tried before Lord *Kenyon*, and his Lordship ruled that the plaintiff had, under such circumstances, no right to take the goods out of the possession of the vendees of *Eustace & Holland; Eustace & Holland* being factors authorized to transfer the property in them, and having actually done so *(m)*.

22. In the case last quoted there were special facts which were considered as equivalent to an indorsement of the bill of lading by the consignor. But if there were not such facts, and the bill was for delivery to order or assigns, and transmitted unindorsed, it was thought that the holder thereof should not by an attempt to transfer the property of the goods to a third person, devest the right of the consignor to stop them *in transitu*. This will appear by the following case. One *Fox*, a wine merchant at *London*, having ordered five pipes of wine from Messrs. *Abbott & Co.* of *Oporto*, they loaded them on board a vessel bound for *London*, and took from the master bills of lading for delivery to order or assigns. One of these bills they transmitted to *Fox* in a letter, wherein they said they had shipped the wine on his account, had sent him a bill of lading, and drawn upon him for the price. *Fox* accepted the bill of exchange thus drawn upon him, which was payable nine months after date. Before the bill of exchange became due, the wine arrived, and *Fox* not being able to pay the duties, it was sent to the King's

(m) Dick v. *Lumsden*, Peake's N. P. Ca. 189.

King's warehouse, under the statute 26 *Geo* 3. *c.* 59; while it remained there, *Fox* being indebted to one *Mary Nix*, and called upon for payment, and unable to pay, sold the wine to her for 40*l.* then paid to him, and the amount of his debt. He became bankrupt soon afterwards; and the agents of the consignors having paid the duties and obtained the goods, *Mrs. Nix* brought an action against them for the value. The case was tried before Lord *Ellenborough*; and it was insisted on behalf of the plaintiff, that there was no difference between the indorsement of a bill of lading by the consignor, and the sending it inclosed in a letter of this import. But his Lordship declared himself to be of a different opinion, and held that the right of the consignor to stop the goods, was not devested under these circumstances *(n)*.

23. By the law of *France (o)* the right of the vendor, or of the person, who has advanced money at *respondentia* on the specific security of goods, cannot be devested by an assignment of the invoice or of the bill of lading; *Emerigon* and *Valin* agree upon this point; although they differ as to the effect of such an assignment upon the right of the general creditors of the assignor; the former maintaining that their right is not devested by it; the latter insisting that it is devested in favour of the operations of commerce: but admitting this to be contrary to the general policy of the *French* Law, which requires actual delivery of possession in order to effect this purpose, according to its general maxim, that a mere assignment does not vest the property, *simple transport ne saisit.* The Ordinance, as I have already observed *(q)*, expressly declares that the sale of a ship at sea shall not prejudice the creditors of the vendor.

24. But

(n) Nix v. *Olive*, ante, page 377. Sit. at Guildhall, before Lord *Ellenborough*, Ch. J. after T. T. 1805; and see note *(r)*, ante, page 377.

(o) Valin on the *French* Ordinance, liv. 2. tit. 10. art. 3. *Emerigon*, tom. 1. p. 319. See before, sect. 2. of this chapter, p. 365.

(q) Liv. 2. tit. 10. art. 3. See *Ante*, part 1. chap. 1 sect. 6. and *Code de Com.* art. 196.

24. But in cases of this nature, an important and difficult question of fact may arise upon the fairness and honesty of the assignment; and even as between the consignor and the original consignee the right to stop the goods may be doubtful in the particular circumstances of the case; and it would be a great hardship upon the owners and masters of ships, if they were obliged to exercise a judgment upon these doubtful matters of fact, and to decide upon them, and deliver the goods at their own peril. But I apprehend the law does not altogether cast this burden upon them. In the case of *Caldwell* v. *Ball*, which I have quoted just before, it was held that the master had discharged himself by delivering the goods to the person, to whom the consignor first indorsed the bill of lading; but in that case the question arose between two consignees, to each of whom a bill of lading had been indorsed, and there had been no countermand or attempt to stop *in transitu*, and the master happened to know the priority of indorsement, which was substantially to the owners of the ship, whereas it may often be out of the power of the master to inform himself satisfactorily of the priority of indorsement. In an earlier case, which was tried before Chief Justice *Lee* at Guildhall, and which was an action brought by the assignee of the original consignee against the master, who had delivered the goods to the person, to whom the consignor had sent another bill of lading as a security, and to enable him to take possession of the goods on his behalf, if the consignee should fail, which had been the case; it appeared in evidence by the testimony of merchants and masters of ships, that by usage, in the case of indorsement of bills of lading to different persons, the master was at liberty to deliver to whichever he thought proper; and upon that ground, the Chief Justice directed the jury to find their verdict in favour of the defendant, and they accordingly did so *(r)*. But perhaps this rule might upon further consideration be held

(r) Fearon v. *Bowers*, 1 Hen. Blac. 364. *note.*

held to put too much power into the master's hands, and it might in some cases be inconsistent with the acknowledged right to stop *in transitu* and defeat the beneficial exercise of it. And it may be collected from a decision of the Court of Common Pleas *(s)*, that if the master, being required to deliver the goods to an agent of the consignor, either expressly engage to do so, or say that he will not part with them, until he is certain of a safe delivery, and afterwards deliver them to the consignee or the persons claiming under him, he will be responsible to the consignor, provided it shall turn out that the consignor was legally entitled to countermand the delivery and take back the goods.

25. In general, where two opposite parties claim a right to receive the goods, both or either of them will be willing to give an indemnity to the master; and the master should in prudence deliver the goods to the party, upon whose indemnity he can most safely rely. But if a satisfactory indemnity is not offered, and the master must exercise a discretion; then if the bill of lading has not been assigned over by the consignee, and he has failed, without doubt the master should deliver to the person who claims for the use of the consignor. If the consignor has indorsed bills of lading to different persons, as was the case in *Caldwell* v. *Ball*, the master should deliver to the person to whom the consignor first made the indorsement *(t)*. If the consignee has assigned the bill of lading, and the validity of the assignment be questionable; it seems most proper for the master to deposit the goods in a place of safety, and apply to the Court of Chancery by way of interpleader, to compel the contending parties to litigate their rights by an action between themselves.

The late act of parliament to which I have already referred, will relieve the master from all difficulty in the cases therein provided for.

(s) Mills & another v. *Ball*, 2 Bos. & Pull. 457. The defendant was a *wharfinger*; but the doctrine applies equally to the case of a *master*.

(t) See the three cases in 1 *Emerigon*, 317, 318. quoted by Sir *Wm. Scott*, in the case of the CONSTANTIA, 6 Rob. 328.

CHAPTER THE TENTH.

OF SALVAGE.

1. HAVING thus treated of the rights and duties arising out of the contracts between the shipowner and merchant, it seems proper in the next place to consider a subject, which the dangers of navigation frequently render interesting to both alike; namely, the compensation that is to be made to other persons, by whose assistance a ship or its loading may be saved from impending peril, or recovered after actual loss. This compensation is known by the name of *Salvage*, and at present is commonly made by a payment in money, but in the infancy of commerce was more frequently made by the delivery of some portion of the specific articles saved or recovered.

All foreign codes of maritime law, both ancient and modern, contain provisions and enactments on this head. In some of them the value to be paid is fixed at a certain portion of the articles saved, or of their value, according to their nature and quality, or the circumstances of the case. But it is obvious that positive and settled rules are little adapted to the administration of justice in varying and unsettled cases; and what can be more various and unsettled, than the degrees of labour experienced on the ocean, or the degrees of peril, to which persons, who engage in the meritorious task of assisting the distressed on that element, are at different times exposed? and therefore in the case of wreck or derelict at sea, the law of *England*, like the law of some other countries, has fixed no positive rule or rate of salvage, but directs only as a general principle that a reasonable compensation shall be made *(a)*. The

(a) In the case of *derelict* becoming the property of the crown, it was formerly the settled practice of the Court of Admiralty to give a moiety

The legislators of all civilized and commercial states in modern times *(b)*, have laboured earnestly to repress by due severity of punishment, the barbarous spirit of plundering the helpless and distressed mariner, whose situation calls for assistance and relief. And very salutary provisions have been made on this subject by the wisdom of our own parliaments *(c)*, but which I shall forbear to detail, as not properly belonging to my subject, and proceed to the consideration of salvage, FIRST, with regard to effects preserved from the perils of the sea; and, SECONDLY, with regard to effects retaken from an enemy, into whose hands they may have fallen.

2. A person, who by his own labour preserves goods, which the owner, or those instructed with the care of them, have either abandoned in distress at sea, or are unable to protect and secure, is entitled by the common law of *England* to retain the possession of the goods saved, until a proper compensation is made to him for his trouble *(d)*. This compensation, if the parties cannot agree upon it, may by the same law be ascertained by a jury in an action brought by the salvor against the proprietor of the goods: or the proprietor may tender to the salvor such sum of money as he thinks sufficient, and upon refusal to deliver the goods, bring an action *(e)* against the salvor; and if the jury think the sum tendered sufficient, he will recover his goods or their value and the costs of his suit. But a person, even though he may be the lord of the manor, cannot entitle himself to a claim of salvage by taking possession

a moiety to the finders or salvors, but the practice has been long disused, and the reward become discretionary. Case of the AQUILA, 1 Rob. A. R. 37. *Wellwood*'s Sea Laws, tit. 24.

(b) I have used the words "*in modern times*," because formerly the claim of the sovereign power in some countries was not less barbarous than the temper of the inhabitants. See *Valin*'s preface to tit. 9. of book 4. of the *French Ordinance*.

(c) See the statutes 3 *Ed.* 1. *c.* 4. 4 *Ed.* 1. *stat.* 2. *sect.* 2. 12 *Ann*, *stat.* 2. *c.* 18. 26 *Geo.* 2. *c.* 19. and 1 & 2 *Geo.* 4. c. 75 & 76. 1 Blac. Com. ch. 8. s. 11.

(d) *Hartford* v. *Jones*, 1 Ld. Raym. 393. *Baring & others* v. *Day*, 8 East, 57.

(e) *Viz.* of *detinue* or *trover*.

session of a wreck or parts thereof against the consent of those, who are at hand and upon the spot, employed by the owner of the ship to save and preserve them *(f)*. And if one set of persons have taken possession of a vessel abandoned at sea, and are endeavouring to bring it into port and save it, another set have no right to interfere with them and become participators in the salvage, unless it appears that the first would not have been able to effect the purpose without the aid of the others *(g)*. Nor, if a vessel be preserved, the cargo of which consists of government stores, is the dispossession of the original salvors by the officers of a king's ship warranted by law without reasonable cause for their interference. Should, however, persons be found in possession, who, from want of experience, may be unfit to be trusted with valuable property, or who have been guilty of gross misconduct, which may render their removal proper and necessary; the interference of the king's officers may in such cases be not only justifiable but even laudable *(h)*. If the salvage is performed at sea *(i)*, or between high and low water mark *(j)*, the Court of Admiralty has jurisdiction over the subject, and will fix the sum to be paid, and adjust the proportions, and take care of the property pending the suit; or if a sale is necessary, direct a sale to be made, and divide the proceeds between the salvors and the proprietors according to equity and reason. And in fixing the rate of salvage, this Court usually has regard not only to the labour and peril incurred by the salvors, but also to the situation, in which they may happen to stand with respect to the property saved, to the promptitude and alacrity manifested by them, and to the value of the ship and cargo, as well as the degree of danger, from which they were rescued.

(f) *Sutton* v. *Buck*, 2 Taunton. 302.

(g) The MARIA, *Kilstrom*, 1 Edw. 175.

(h) BLENDEN HALL, *Barr*, 1 Dodson, A. R. 414.

(i) The jurisdiction of the Court of Admiralty seems not to extend higher up the river *Thames*, than a Sand called the *Black Tail Sand*. See 6 Rob. 39. and the case of *Baxter & others* v. *Reader*, there cited.

(j) 1 & 2 *Geo.* 4. *c.* 75. *s.* 31.

rescued *(j)*. In the case of a homeward-bound *West India* ship taken by the *French*, near the coast of *Jamaica*, while proceeding from *Savannah le Mar* to *Bluefields* to join convoy, and re-captured by persons going in boats from the shore, *one-sixth* was allowed for salvage; and as the voyage homeward, and consequently the right to freight, had commenced, and the freight was ultimately earned, the salvage was paid upon the freight as well as the ship and cargo *(k)*. So in the case of the *English* ships liberated from the *French* upon the occupation or capture of *Oporto* by the *British* and *Portugueze* troops, salvage was allowed upon the freight of such of them as had gone out from *England* in ballast under contracts to fetch home cargoes *(l)*.

In the case of a *British* ship, purchased at sea from a *French* privateer by an *American* captain, whose own ship had also been taken by the same privateer, and who was allowed to take his own and the *British* crew on board the purchased ship, and who was considered to have fairly intended to restore the *British* ship to her owners, the owners were directed to protect him against the bills drawn for the purchase, and also to pay him a sum of money equal to about *one-seventh* of the value after deducting the purchase-money *(m)*.

In the case of a slave ship rescued from insurgent slaves on the coast of *Africa*, by another vessel employed in the same trade, *one-tenth* of the value was allowed *(n)*. In the case of a *Danish* ship, deserted by its crew on the *English* coast, and brought into *Harwich* without any considerable danger, *two-fifths* were decreed for salvage *(o)*. In the case of another ship, which having struck upon a rock, lost her rudder,

(j) The WILLIAM BECKFORD, *Muirhead*. At the Delegates, 17th and 24th Nov. 1801. MS. 3 Rob. A. R. 355. S. C.

(k) The DOROTHY FOSTER, *Sowden*, 6 Rob. A. R. 88.

(l) The PROGRESS, *Barker*, 1 Edw. 210.

(m) The HENRY, *Hannay*, 1 Edw. 192.

(n) The TRELAWNEY, *Lake*, 4 Rob. A. R. 223.

(o) The FORTUNA, *Quest*, 4 Rob. A. R. 193.

rudder, had her bottom beaten in, and been deserted by the crew, was weighed off with great peril by one set of persons, and placed in such a situation as to enable the master to bring off some bullion, but which afterwards sunk, and was again weighed up and brought into *Harwich* by another set of persons, *two-thirds* were decreed, and the amount distributed rateably among the first and second set of salvors *(p)*. In another case, where a captured ship had been deserted by the captors and was recovered and saved with great risk, trouble and discretion, a moiety was given *(q)*. The Court of Admiralty will give as much encouragement as possible to a steam boat assisting in the preservation of property in danger, or actual apprehension thereof, on account of the great skill and the great power of vessels of this description *(r)*. But the Court will not suffer a claim of salvage to be ingrafted on the local ignorance of foreigners, who cannot be expected to be well acquainted with our coast, although a recompence must be made for the service actually rendered to them *(s)*. Neither is a passenger entitled to make a claim for the ordinary assistance he may be enabled to afford to a vessel in distress; it being the *duty*, as well as the interest, of all persons on board of every description, to contribute their aid on such an occasion. A passenger, however, is not bound to remain on board the ship in the hour of danger, but may quit it, if he has an opportunity to do so: much less is he required to take upon himself any responsibility as to the conduct of the ship. And therefore in the following case, a passenger was permitted to recover a very considerable sum for extraordinary services performed, and responsibility incurred. A ship bound to the *West Indies*, struck upon the shoals of *Chichester*, in a gale of wind, and in that situation

(p) The JONGE BASTIAAN, *Steyting*, 5 Rob. A. R. 322.

(q) The ELLIOTTA, 2 Dodson, A. R. 75.

(r) RAIKES, *Gardiner*, 1 Haggard, A. R. 246.

(s) The VROUW MARGARETHA, *Jacobs*, 4 Rob. A. R. 103.

tion was deserted by the master, who took part of the crew with him. A person who had commanded vessels in the same trade, and was then on board as a passenger, took the command of the ship, by the desire of the passengers, and with the consent of the mate and the remainder of the crew, and carried her back in safety to *Ramsgate* harbour. The owner approved of his conduct, and in a letter to the underwriters, attributed the preservation of the ship to his skill and management, and intimated that he thought 200*l.* the lowest compensation that could be made to him; this was done under an expectation that the remuneration might form a part of a general average. At the trial of the cause, the Chief Justice, Lord *Alvanly*, said he was inclined to think the plaintiff was entitled to be paid something for his service, as he appeared to have placed himself in a situation of responsibility, and would have been answerable for neglect or misconduct. The jury gave 400*l.* An application was made to the Court of Common Pleas in the ensuing term to set aside the verdict, but the Court refused to do so *(t)*.

If a hired transport, under the care of a master appointed by the owner, be brought into difficulty, in the execution of a service in which men of war and transports are associated, a man of war is bound, if it be in his power, to extricate the transport, and can have no claim in the nature of salvage for the performance of this *duty (u)*. So also, if part of the crew mutiny, and obtain a temporary possession of the ship, and another part afterwards attack and overpower the mutineers, and recover the ship, the latter cannot maintain a suit for *salvage*, because their conduct, though meritorious, is only the performance of a *duty* incumbent on them *(x)*. Although, however, by the law of *England*,

(t) *Newman* v. *Walters*, 3 Bos. & Pull. 612.

(u) Belle, *Betts*, 1 Edwards, A. R. 66. See also the Francis & Eliza, 2 Dodson, A. R. 115.

(x) Governor Raffles, *King*, 2 Dodson, A. R. 14.

England, there is an obligation upon King's ships to assist the merchant vessels of this country, still a King's ship may be entitled to an adequate reward for services performed by her *(y)*. If the preservation of life can be connected with the preservation of property, whether by accident or not, the Court of Admiralty can take notice of it, but has no power of remunerating *the mere preservation of life*, which must be left to private bounty *(z)*. It is not necessary for salvors, in order to maintain their rights, to remain on board the vessel which has received their assistance *(a)*.

When a well-founded claim of salvage has been entered in the Court of Admiralty, the proper course to be pursued by the defendants, in order to save the expence of further proceedings, is to tender, in the first stage of the cause, by *acts of Court*, and not personally and verbally to the claimants, a specific sum for the salvage, accompanied by an offer to pay the costs incurred. The Court will then consider of the sufficiency of the sum tendered, and if it shall be thought sufficient will make the party, who refuses the offer, liable not only to his own costs, but also to the costs of the other side, if it shall appear that the proceedings have been vexatiously pursued *(b)*.

In the case of valuable property, and numerous proprietors and salvors, the jurisdiction and proceedings of this Court are admirably adapted to the purposes of justice. But as the delay and expence necessarily incident to the proceedings of a high tribunal, sitting at a distance from the subject in contest, will often be injurious to the parties, the legislature has endeavoured to introduce a more expeditious and less expensive mode of adjustment. For this purpose several provisions have been at different times made

(y) Mary Ann, *Ferrier*, 1 Haggard, A. R. 158.

(z) Aid, *Teasdel*, 1 Haggard, A. R. 83.

(a) By Lord *Stowell*, in the Eleanora Charlotta, *Osterman*, 1 Haggard, A. R. 156.

(b) The Vrouw Margaretha *Jacobs*, 4 Rob. A. R. 103. See also the Eleanora Charlotta, *Osterman*; and the John & Thomas *Baxter*, 1 Haggard, A. R. 156, 157.

made by the legislature; *first*, by a statute passed in the reign of Queen *Anne (c)*, which, however, is confined to the case of assistance rendered to ships in distress by or under the direction of certain public officers and persons therein mentioned; *secondly*, by another statute passed in the reign of *George the Second (d)*, by which the first act was in some respects improved, and which also provided for the case of assistance *voluntarily given* by persons not employed for that purpose; afterwards, by a statute passed in the reign of *George the Third (e)*, which provides for the case of assistance *given at the request of the persons belonging to the ship*, without the intervention of the public officers or persons mentioned in the *first* statute; and also contains several regulations applicable to minor services and cases not within the former statutes: and further, by other statutes passed in the same reign *(f)*, and in the reign of his present Majesty *(g)*. I propose to detail these legislative provisions at some length: *but I must premise that they do not apply to the Cinque Ports*; those ports have been made the subject of distinct enactments, which will be noticed afterwards *(h)*.

3. In the first place, in all parts of *England, except the Cinque Ports*, all sheriffs, deputy sheriffs, justices of the peace, and all mayors, bailiffs, and other head officers of corporations and port towns near the sea, coroners, commissioners of the land tax, constables, headboroughs, tithingmen, and officers of the customs or excise, upon application made to any of them, by or on the behalf of the chief officer of any vessel belonging to the King's subjects, or *others*, in danger of being, or actually being, stranded or run on shore, are empowered and required to command the constables

(c) 12 *Anne, stat.* 2. *chap.* 18.
(d) 26 *Geo.* 2. *chap.* 19.
(e) 48 *Geo.* 3. *ch.* 130. *sect.* 21 & 22. 1 & 2 *Geo.* 4. *c.* 76.
(f) 53 *Geo.* 3. *c.* 87.
(g) 1 & 2 *Geo.* 4. *c.* 75.
(h) By the statute 39 & 40 *Geo.* 3. p. l. & p. c. x. some provisions are made for adjusting the salvage of anchors, cables, &c. found in the river *Humber*. The same Act regulates the pilotage to and from the port of *Kingston-upon-Hull*.

constables of the ports nearest to the coast, to call together as many men as shall be necessary to the assistance and for the preservation of the distressed ship and its cargo; and if any other ship belonging to the King or his subjects, happens to be riding at anchor near the place of distress, the officers of the customs, and constables, or any of them, are empowered and required to demand of the superior officer of such ship, assistance by his boats, and such hands as he can conveniently spare; and if such superior officer refuses or neglects to give such assistance, he forfeits 100 *l.* to be recovered by the superior officer of the ship in distress, with costs of suit in any Court of record *(i)*.

4. And to prevent confusion among the persons assembled, either for want of proper orders, or by contradictory orders, they shall conform, in the first place, to the orders of the master, or other officers or owners, or the persons employed by them; and for want of their presence and directions, to the orders of the persons authorized to execute these statutes in the following subordination, as they happen to be present; namely, officer of the customs, officer of excise, sheriff or his deputy, justice of the peace, mayor or chief magistrate of a corporation, coroner, commissioner of the land tax, chief constable, petty constable or other peace officer; under the penalty of 5 *l.* for wilful disobedience of such orders, to be levied by warrant of a justice.

5. The high sheriff, by the common law, and by the statute *(k)*, in case of need, and in the absence of the high sheriff, any justice of the peace may take sufficient power of the county, to repress all unjust violence, and duly to enforce the execution of the statute. And the commander of the ship in distress, or officer of the customs, or constable on board the same, may repel by force persons who, without their consent, press on board the ship, and thereby molest them in its preservation *(l)*.

6. And

(i) 12 *Anne, stat.* 2. *c.* 18. *s.* 1. and 26 *Geo.* 2. *c.* 19. *s.* 9.

(k) 26 *Geo.* 2. *c.* 19. *s.* 13.

(l) 12 *Anne, stat.* 2. *c.* 18. *s.* 3.

6. And for the information of persons interested, who may happen to be absent, the officers of the customs shall, as soon as convenient, cause all persons belonging to the ship, and others, who can give an account thereof, or of the cargo, to be examined upon oath before some justice of the peace, as to the name or description of the ship, the names of the master and owners, and of the owners of the cargo, and of the places of departure and destination, and the occasion of the ship's distress; which examination the justices are to take down in writing, and to deliver a copy thereof, with a copy of the account of the goods, to the officer of the customs, who shall transmit the same to the secretary of the Admiralty, who shall publish in the next *London Gazette*, so much thereof as shall be necessary for the information of the persons interested *(m)*.

7. And for the encouragement of persons, who give their assistance, and for adjusting their reward, the first statute *(n)* provides, that the officers of the customs *(o)*, master of any ship, and all others who shall act or be employed in the preservation of ship or goods, shall within *thirty days* be paid a reasonable reward by the master, mariners or owners of the ship in distress, or the merchant whose ship or goods shall be saved; and in default, the ship or goods saved shall remain in the custody of the officer of the customs, or his deputy, until the persons employed shall be reasonably gratified, or good security given for that purpose to their satisfaction; and in case after such salvage, the superior officers, mariners, or owners of the ship saved, or merchant whose goods shall be saved, shall disagree with the officer of the customs, or his deputy, touching the monies deserved by any of the persons employed, the commander of the ship saved, or owner of the goods, or merchant interested therein, and the officer of the customs, or his deputy, may nominate *three* of the neighbouring

(m) 26 *Geo.* 2. *c.* 19. *s.* 15.
(n) 12 *Anne, stat.* 2. *c.* 18. *s.* 2.
(o) The words of the act are "the *said* collectors," but *collectors* have not been named before.

ing justices of the peace, who shall thereupon adjust the quantum of gratuities to be paid to the several persons acting or being employed in the salvage; and such adjustments shall be binding to all parties, and shall be recoverable in an action at law, to be brought in any court of record by the respective persons, to whom the same shall be allotted. And in case it shall happen, that no person shall appear to make his claim to all or any the goods that shall be saved, then the chief officer of the customs of the nearest port to the place where the ship was in distress, shall apply to *three* of the nearest justices of the peace, who shall put him or some other responsible person in possession of the goods, such justices of the peace taking an account in writing of the goods, to be signed by such officer of the customs; and if the goods shall not be legally claimed within the space of *twelve months* next ensuing, by the rightful owner thereof, then public sale shall be made thereof, and if perishable goods forthwith to be sold, and after all charges deducted, the residue of the monies arising by such sale, with a fair and just account of the whole, shall be transmitted to the Exchequer, there to remain for the benefit of the rightful owner *when appearing*; who upon affidavit or other proof, made of his right or property thereto, to the satisfaction of one of the Barons of the coif of the Exchequer, shall upon his order receive the same out of the Exchequer.

But this statute not containing a provision for adjustment of the salvage, if the contending parties could not agree in the nomination of justices; nor providing any method of raising money immediately for payment thereof, and being defective in other respects, the second statute(*p*) provides, that the justice of the peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest to the place, where any ship or goods shall be stranded, shall forthwith give public notice for a meeting to

(*p*) 26 *Geo.* 2. *c.* 19. *s.* 6.

to be held as soon as possible of the sheriff, or his deputy justices of the peace, chief magistrates of towns corporate, coroners, and commissioners of the land tax, who, or any five or more of them, are required and empowered to examine persons upon oath, adjust the quantum of salvage, and distribute the same among the persons concerned; and the sheriff and other persons before mentioned, attending and acting at the meeting, shall each be paid *four shillings* a day (*q*) for his expences in such attendance, out of the effects saved.

And if the charges and rewards of salvage directed to be paid by these statutes shall not be paid, or sufficient security given for the same, within *forty days* next after the services performed, the officer of the customs, concerned in the salvage, may borrow and raise as much money as shall be sufficient to pay such charges and rewards, or any part thereof then remaining unpaid, or unsecured, by bill of sale, under his hand and seal, of the ship or cargo saved, or a sufficient part thereof, redeemable nevertheless upon payment of the principal borrowed, and interest at *four per cent* (*r*).

8. The provisions before mentioned applying only to the case of services performed under the orders of persons authorized to give directions in this respect: it is further directed by the second statute (*s*), that in case any person or persons, not employed by the master, mariners, or owners

(*q*) This is the sum appointed to be paid to the justices for their attendance at the Quarter Sessions, by a statute made in the 12th year of the reign of *Richard* 2. A. D. 1388, and which still continues, although so utterly inadequate in the present times. But experience shews that the gentlemen of the country are induced to discharge the important office of magistrates by the most honourable motives, and without expecting a remuneration even of their actual expenses.

(*r*) 26 *Geo.* 2. *c.* 19. *s.* 7.

(*s*) 26 *Geo.* 2. *c.* 19. *s.* 5. By 6 *Geo.* 4. *c.* 105. *s.* 100. so much of this act of the 26 *Geo.* 2. as relates to the revenue of the Customs is repealed: it seems difficult to say what or how much that may be. This fifth section of the 26 *Geo.* 2. is referred to in the margin of the repealing act. Perhaps the repeal was intended to introduce the 47th & 48th sections of *chap.* 107. relating to the sale of goods to defray salvage, duty free; for which see Appendix.

owners, or other persons lawfully authorized, in the salvage of any ship, or the cargo or provision thereof, shall, in the absence of persons so employed or authorized, save any ship or goods, and cause the same to be carried for the benefit of the proprietors into port, or to any adjoining Custom-house, or place of safe custody, immediately giving notice thereof to some justice, magistrate, custom-house or excise officer, or shall discover to any such magistrate or officer, where any such effects are wrongfully bought, sold, or concealed, such persons shall be entitled to a reasonable reward, to be paid by the master or owner of the vessel or goods, and to be adjusted in case of disagreement about the quantum, in the same manner as salvage is to be adjusted either by the first or latter statute, as the case shall require.

8. *b.* The case of salvors acting "under and by the "mere employment and authority of the commander or "other superior officer, mariners, or owners of any ship or "vessel in distress," where no application was made to the public officers mentioned in the first statute, being unprovided for; it was afterwards enacted, that all the means which subsisted by virtue of that statute, and might by law be applied for the recovering and adjusting the quantum of salvage in cases within it, should be applicable and available in this case also; and if the commander or other superior officer, mariners, or owners of the ship so saved, or the merchant, or other person, whose goods shall be saved, or their agents, should disagree with the salvors, as to the quantum of the gratuity; the commander of the ship, or the owner of the goods, or the merchant interested therein, or their agents, and the salvors, might nominate three of the neighbouring justices of the peace to adjust it; and if the parties should disagree in the nomination, any one of the parties might apply to one such justice, who might nominate two others, and the three might make the adjustment (*l*). An

(*l*) 48 *Geo.* 3. *c.* 130. *s.* 21 & 22. 49 *Geo.* 3. *c.* 122. *s.* 32. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 37.

An act was passed in the 53d year of the late king *(u)*, continuing for seven years, the acts of the 48th and 49th already referred to, and another in the first and second years of the reign of his present majesty *(x)*, which recites that it is expedient that the acts of the 49th and 53d *Geo.* 3. should be further continued, and then proceeds with enactments similar to those contained in them. These acts of the 53d *Geo.* 3. and 1st & 2d *Geo.* 4. supply a deficiency in the former statutes, by enacting that goods of so perishable a nature, or so much injured or damaged that they cannot be kept, may, at the request of the persons interested or concerned in them, or in the saving and preserving of them, be sold with the consent of a justice of the peace *(y)*. They also authorize the passage of carts and carriages assisting in the preservation of wreck, over lands near to the part of the sea-coast where a vessel is wrecked, if there be no road equally convenient and expeditious, and also the placing on such lands of any parts of a wrecked vessel or goods saved for a reasonable time, making compensation to the occupier of the land, to be adjusted in the way directed by the act, and subjects to a penalty the owner or the occupier of the land interrupting or impeding such passage or placing *(z)*.

In order to assist the owners in the recovery of property no lord of the manor, or other person claiming to be entitled to wreck or goods, shall appropriate or dispose of the same until he shall have caused to be given in writing to the deputy vice admiral of that part of the coast, or to his agents if they reside within 50 miles, if not, then to the corporation of the Trinity House, a report, containing an accurate and particular description of the wreck or goods found, and of the place where and time when found, and of any marks thereon, and of such other particulars as may the

(u) 53 *Geo.* 3. c. 87.

(x) 1 & 2 *Geo.* 4. c. 75. See Appendix.

(y) 53 *Geo.* 3. c. 87. *s.* 3. and 1 & 2 *Geo.* 4. c. 75. *s.* 27.

(z) 53 *Geo.* 3. c. 87. *s.* 4 & 5. and 1 & 2 *Geo.* 4. c. 75. *s.* 29 & 30.

the better enable the owner to recover them, and also of the place where they are deposited, and may be found and examined by any person claiming any right to them, nor until the expiration of one whole year and a day after the delivery of such notice: The deputy vice admiral or his agent are, within 48 hours after receiving such report, to transmit a copy thereof to the secretary of the corporation of the Trinity House, upon pain of forfeiting for any neglect to transmit such account 50 *l.* to any person who shall sue for the same, and the secretary is to cause such account to be placed in some conspicuous situation for the inspection of all persons claiming to inspect and examine it *(a)*.

Questions of salvage performed between high and low water mark are to be deemed to be within the jurisdiction of the Court of Admiralty, or Courts at *Westminster(b)*. A *foreign* vessel doing damage to a *British* vessel in any harbour, &c. may be arrested till the master or owner or consignee, or their agent, shall undertake to appear and be defendant in an action, and give security for the damage and costs to be recovered *(c)*.

And by the last act, the owners, or on their refusal, the salvors, may in all cases sell so much of the property saved, as will defray the salvage and such charges as shall be allowed by the Court of Admiralty or the Justices *(d)*. And by a subsequent act the commissioners of the Customs are to allow a sale for this purpose duty free *(e)*.

8. *c.* The regulations before mentioned are chiefly applicable to the case of ships actually stranded or in danger of being so, and from which the goods are taken out by the salvors; I propose in the next place to mention the regulations

(a) 53 *Geo.* 3. *c.* 87. *s.* 2. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 26.

(b) 53 *Geo.* 3. *c.* 87. *s.* 6. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 31.

(c) 53 *Geo.* 3. *c.* 87. *s.* 7. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 32.

(d) 1 & 2 *Geo.* 4. *c.* 75. *s.* 38. By this section the Commissioners of Excise were to allow such sale duty free; but this is repealed by the 6 *Geo.* 4. *c.* 105. *s.* 351.

(e) 6 *Geo.* 4. *c.* 107. *s.* 47.

lations introduced with respect to minor services, and the preservation of things under different circumstances: confining myself however to such of them as are in some way connected with salvage, and referring the reader to the last of the two statutes on this subject, which will be found at large in the *Appendix*, for such as more properly belong to the criminal code.

In the first place then, all persons, who shall take up any anchors, cables, or goods, that may have been left by any vessel within any harbour, river, or bay, or on any of the coasts, whether the same shall have been in distress or otherwise, are required to send a report in writing of the articles found, and the time and place of finding, to a deputy vice admiral or his agent at or near the port, to which they shall first bring the articles, within twenty-four hours after their arrival, or before they leave the place if they leave it within that time; and deliver them at such place as the vice admiral of each county shall appoint for safe custody until the articles are claimed by the owner or his agent, and the salvage and charges are paid or secured *(f)*; and the deputy vice admiral or his agent is to send the report or a copy of it to the secretary of the corporation of the Trinity-house of *Deptford*, who is to place it in some conspicuous situation for public inspection. This report is to be transmitted within two days if the articles are of the value of 20*l.* but it need not be done until the articles deposited amount to that value *(g)*. The deputy vice admiral or his agent may also seize such articles as have not been reported to him, and is required to keep and report them to the Trinity-house in like manner; and if he seizes without previous information he is to have one-third of the value; if he seizes in pursuance of information the third is to be divided between him and the informer *(h)*. If the articles are not

(f) 49 *Geo.* 3. *c.* 122. *s.* 1. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 1.

(g) 49 *Geo.* 3. *c.* 122. *s.* 2 & 3. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 2.

(h) 49 *Geo.* 3. *c.* 122. *s.* 4 & 6. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 3 & 5.

not claimed within a year and a day after the report transmitted, they are to be sold, and the money applied as directed by the act of Queen *Anne* (*i*), and in case they had been seized, the deputy vice-admiral or his agent, and the informer (if any) are equally entitled to the salvage, which shall be allowed by the Court of Admiralty to the salvors in the case of unclaimed property (*k*). And in case of disagreement as to the amount of salvage, or the value of the articles, they are to be adjusted by three Justices residing near the place where the articles are deposited, or in case the Justices differ, they may nominate a third person conversant in maritime affairs (*l*).

In like manner three Justices, or their nominee, are authorized to decide on all claims made by pilots, boatmen and other persons, for services of any description, (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables or other stores, from any port or ports of the coast of *England* and *Wales*, and *Berwick-upon-Tweed*, or for the saving and preserving any goods or merchandize, which may have been wrecked, stranded, or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel; the master, owner or owners of such ship or vessel, or his, her, or their agent or agents, being present with such Justices—and this whether the vessel shall at the time be in distress or not (*m*).

Either party, however, may, within *ten* days after the award is made, declare his desire of obtaining the judgment of the Court of Admiralty respecting the salvage, and thereupon the person claiming the salvage must proceed within *thirty* days from the date of the award by taking out

(*i*) 12 *Ann. Stat.* 2. *c.* 18. *s.* 2. at the end.

(*k*) 49 *Geo.* 3. *c.* 122. *s.* 7. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 6.

(*l*) 49 *Geo.* 3. *c.* 122. *s.* 5 & 8. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 4 & 7. The former of these acts gives the power to *two* Justices.

(*m*) 49 *Geo.* 3. *c.* 122. *s.* 9. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 8.

out a monition; but the justices are in such cases to deliver the goods to the proprietors or their agent, upon their giving good security in double the amount of the value to be taken in the manner prescribed by the act *(n)*.

If the master, mate, or crew of any vessel bound to parts beyond the seas, shall find and take on board the vessel, any anchor, cable, goods, or merchandize, or receive and take them on board from any other person, knowing the same to have been so found, the commander of the vessel must make an entry of the articles and the time and place of finding in his log-book, and at the first possible opportunity transmit a copy of the entry to the Trinity-house, and on the return of the vessel to any port in *England* or *Wales*, or the town of *Berwick-upon-Tweed*, he must deliver the articles to a deputy Vice Admiral or his agent, who is to transmit a similar report as before-mentioned to the Trinity-house for public inspection; and if there is no claim within a year and a day after such report transmitted, the articles are to be sold and disposed of according to law with regard to unclaimed property *(o)*.

9. The regulations already detailed do not, as has been before observed, apply to any thing happening within the jurisdiction of the *Cinque Ports (p)*, but several statutes *(q)* have been passed for matters occurring within that jurisdiction, the last of which appears to embody the provisions of the preceding with some alterations and additions, and will therefore alone be particularly noticed in this place.

10. The Lord Warden of the *Cinque Ports* for the time is to appoint three or more substantial persons in each of the

(n) 49 *Geo.* 3. *c.* 122. *s.* 10. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 9. The former of these two statutes limited the time of the declaration to forty-eight hours.

(o) 49 *Geo.* 3. *c.* 122. *s.* 14. and 1 & 2 *Geo.* 4. *c.* 75. *s.* 13.

(p) The Cinque Ports are *Dover*, *Sandwich*, *Romney*, *Hastings*, and *Hythe*; and the two ancient towns are *Winchelsea* and *Rye*. The jurisdiction may in general be considered to extend from *Seaford* along the coast of *Sussex* and *Kent* towards the *Thames*. The limits are particularly defined in the 18th section of the Stat. 1 & 2 *Geo.* 4. *c.* 76. which will be found at large in the Appendix.

(q) 3 *Geo.* 1. *c.* 13. *s.* 5; 26 *Geo.*

the *Cinque Ports*, two ancient towns and their members, to adjust and determine any difference relative to salvage, which may arise between the master of any vessel and the person or persons bringing cables and anchors ashore; and in case any vessel shall be either forced or cut from her cables and anchors by extremity of weather, or by any other accident whatever, and leave the same in any roadstead or other place within the jurisdiction, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any *three* or more of the said persons so to be appointed as aforesaid, within the space of *twenty-four* hours after such difference shall be referred to them for their determination thereof *(r)*.

The Commissioners are authorized to decide on all claims made by any person whatsoever for services of any sort or description rendered to any vessel, as well for carrying out anchors, cables or stores, from any place within the jurisdiction, as for conducting vessels from the *Downs*, and other bays and roadsteads on the coast of *Kent Sussex* and *Essex*, and from the island of *Thanet*, or from the sea, or any place, to *Ramsgate*, *Dover*, or any other place with the jurisdiction, or for the saving or preserving within the jurisdiction any goods or merchandizes, wrecked, stranded, or cast away from any vessel, the master or owners thereof, or their agent, being present at the place where the commissioners are sitting; and this whether the ship shall have been in distress or not *(s)*. But no Commissioner can act for any other port or place than that in which, or within a mile whereof, he is resident *(t)*. And either party may within *eight days* after the award declare his desire of obtaining the judgment of some competent Court of Admiralty with respect to the salvage or compensation, in which case the party must forthwith declare whether he will proceed

2. *c.* 19. *s.* 10; 48 *Geo.* 3. *c.* 130. and 1 & 2 *Geo.* 4. *c.* 76.

(r) 1 & 2 *Geo.* 4. *c.* 76. *s.* 1.
(s) Id. *sect.* 2.
(t) Id. *sect.* 3.

ceed in the Admiralty of *England*, or in the Admiralty of the *Cinque Ports*, and must proceed within *twenty days* from the date of the award; and the commissioners are to permit the ship and cargo to depart on their voyage, or deliver the goods to their owners, taking bail in double the amount of the sum awarded *(u)*. An appeal so made is to be deemed final *(x)*.

Anchors, cables and other ship's stores and materials, and merchandize and marine stores taken possession of by boatmen and others, within the jurisdiction, are to be delivered at *Ramsgate, Deal, Dover, Harwich, Brightlersea* or *Wivenhoe*, or such other place of public deposit as shall be declared by the Lord Warden *(y)*, and the officers of the Lord Warden may seize such articles either within or without the jurisdiction, and either at sea or on shore, if concealed or conveyed to any other than one of the places of public deposit, or attempted so to be *(z)*. The Lord Warden of the *Cinque Ports*, the Lieutenant of *Dover Castle*, the Deputy Wardens and the Judge of the Court of Admiralty of the *Cinque Ports*, Two ancient towns, and the members thereof, for the time being, and any other officers specially appointed by the Lord Warden, may execute within the jurisdiction all matters contained in the act, in like manner as any magistrate, or any commissioner to be appointed by virtue of the act may do *(a)*.

By this Act also all the means which may be applied by virtue of the before mentioned statute of Queen *Anne* in cases within that statute, for the conclusively adjusting and recovering of salvage, may be applied in the case of persons acting under the mere employment of the officers, mariners or owners of any ship in distress, and on payment or tender and refusal of the quantum to be paid, or security given for payment thereof to the satisfaction of the commissioners, who shall have adjusted, no officer of the customs

(u) 1 & 2 *Geo.* 4. c. 76. s. 4.
(x) Id. *sect.* 5.
(y) Id. *sect.* 7 & 8.
(z) Id. *sect.* 9 & 11.
(a) Id. *sect.* 15.

customs or other person in possession, may any longer retain the possession on any claim to compensation *(b)*, and the owners, or on their refusal, the salvors, may in all cases sell so much of the property saved as will defray the salvage, and such charges as shall be allowed by the High Court of Admiralty, or the Court of Admiralty of the *Cinque Ports*, or the Commissioners *(c)*. And it seems that in this case also the Commissioners of the Customs are to allow the sale duty free *(d)*.

I have been thus particular in arranging and detailing the provisions of these statutes, from a hope that a better knowledge of them may induce the masters of ships in distress to avail themselves of them; and not submit to the very heavy charges too frequently made for assistance on such occasions *(e)*, or incur the expence of litigation in the Courts of Law.

11. I proceed in the next place to the consideration of salvage payable upon *recapture*.

I have in a former chapter *(f)* spoken of the subject of capture, and of the alteration of property thereby occasioned. With a view to the subject more immediately under consideration at present, it may be taken as a general proposition, liable only to one exception, which will be noticed hereafter, that the ships or goods of the subjects of

(b) 1 & 2 *Geo.* 4. *c.* 76. *s.* 19.

(c) Id. *s.* 20. The power of selling duty free, which was given by this act, also is repealed by the 6 *Geo.* 4 *c.* 105. *s.* 352.

(d) 6 *Geo.* 4. *c.* 107. *s.* 47.

(e) The *French Ordinance*, so often quoted, contains an apparently excellent set of regulations on this subject, liv. 4. tit. 9. *des Naufrages*. All vessels, &c. driven on shore, whether belonging to subjects or foreigners, are taken into the King's protection: the officers of the Admiralty are the persons appointed to preserve and take charge of them, and pay the persons, who assist in the salvage, and who are to act under their orders. But there seems to be no proper mode of settling the charges of the officers themselves, no custos custodum; and this defect has probably occasioned the complaints which the commentator informs us have been often made against their conduct in many places. A year and a day is the period allowed for reclaiming property, after which it is to be sold for the benefit of the crown. But claims have in fact been allowed after that period, as *Valin* informs us.

(f) *Ante*, part 1. ch. 1. sect. 7.

of this country taken at sea by an enemy, and afterwards retaken at any indefinite period of time, and whether before or after sentence of condemnation, are to be restored to their original proprietors upon payment of salvage to the recaptors. This however is the result of the peculiar enactments of the Legislature of this country; it is a new and peculiar law made by this country for itself, in favour of merchant property recaptured, introducing a policy not originally adopted by other countries, and differing from its own more ancient practice. By the ancient rule of law, where a ship was taken and carried *infra præsidia*, and especially after a sentence of condemnation, the ship became the property of the captor; and if retaken, the former owner had no *jus postliminii*; and this continued to be the general law of *Europe* down to a very late period (*g*).

With regard to the beneficial interest in the goods of an enemy taken at sea, it was anciently established that in the case of capture by ships in the pay of the King, the King should have *one-fourth*, the owners of the ships another *fourth*; and the other moiety be divided among the captors; the admiral taking, if present, the share of *two* men in each vessel; if absent, of *one* only; and in the case of capture by private ships not in the King's pay, the King should claim no part, but the captors take the whole, allowing, however, to the admiral as much as the share of *two* men (*h*.) But these proportions were occasionally varied at the King's pleasure; and Sir *Matthew Hale* informs us, that in his time the admiral had the *third* of goods taken by private men of war as his fee, but in right of the King (*i*). The entire beneficial interest was first

(*g*) By Sir *Wm. Scott*, in the case of L'Actif, *Lorrial*, 1 Edw. 185.

(*h*) Black Book of the Admiralty, a. 19, 20. *Clerk's Praxis*, p. 163.

(*i*) *Hale's* Treatise in three parts, part. 3. chap. 28. In *Hargrave's* Law Tracts, p. 247. Two of the Ordinances, passed in the time of the usurpation, mention "the *tenths* of prizes customarily "due to the Lord High Admiral,"

first given to the captors whether belonging to the royal navy, or private ships of war, by a statute passed in the reign of Queen *Anne (k)*. This statute however contains no regulation of salvage or other provision in the case of recapture. During the short war with *Spain* in the reign of *George the First*, no legislative provision was made on the subject of prize. Soon after the declaration of war against *Spain* in the *thirteenth* year of the reign of *George the Second*, and against *France* in the *seventeenth* and *twenty-ninth* years of the same reign, acts of parliament *(l)*, were passed on this subject, by each of which the ships or goods of the King's subjects taken and retaken, were decreed to be restored to their original owner, and the rate of salvage was fixed at *one-eighth* in the case of recapture by the King's ships; but in the case of recapture by private ships, whether acting with or without commission, the rate was made to vary according to the length of time, during which the vessel might have been in the possession of the enemy; if such possession had not exceeded *twenty-four* hours, the rate was fixed at *one-eighth*, if between *twenty-four* and *forty-eight* at *one-fifth*, if between *forty-eight* and *ninety-six* at *one-third*, if above *ninety-six* at *one-half*. And in all cases, if the vessel recaptured were set forth as a vessel of war, during its possession by the enemy, the rate of salvage was fixed at *one-half*. A provision similar to the last had been made by several ordinances in the time of the usurpation *(m)*, which in all other cases settled the salvage at *one-eighth*. The variation of the rate of salvage according to the time of the enemy's possession probably occasioned many disputes, and therefore in the statutes passed in the last

and direct the same to be laid out in medals, as a reward for eminent services. *Scobell's* Acts, A. D. 1648, c. 12. and 1649, c. 21. The distribution of prize is settled by those Ordinances, and by the Ordinances of 1650, c. 28 & 33.

(k) 6 *Ann.* c. 13. See Dr. *Robinson's* note in the case of the Der Mohr, *Helmer*, 4 Rob. A. R. 315.

(l) 13 *Geo.* 2. *chap.* 4. Recapture, *sect.* 18. 17 *Geo.* 2. *chap.* 34. Recapture, *sect.* 20. 29 *Geo.* 2. *chap.* 34. Recapture, *sect.* 24.

(m) *Scobel's* Acts, A. D. 1648, c. 12. 1649, c. 21. and 1650, c. 28 & 33.

last reign the rate has been uniformly fixed. At the commencement of hostilities with *America (n)*, and afterwards with the *French King (o)*, it was fixed at *one-eighth*, as well in the case of private ships as of those belonging to the royal navy; except in the case of vessels set forth as ships of war, in which case as in the former statutes, it was fixed at *one-half*. At the commencement of the war, in the year 1793, the legislature fixed the rate of salvage at *one-eighth* for the royal navy, and at *one sixth* for private ships; and in case of recapture by the joint operation of his Majesty's ships, and private ships, authorized the Judge of the Court to order such salvage as he should deem fit and reasonable: but enacted that recaptured ships, set forth by the enemy as vessels of war, should wholly belong to the recaptors, and not be restored to the original owners *(p)*. And by this last statute it is also provided, that if a ship be retaken before she has been carried into an enemy's port, it shall be lawful for her, if the recaptors consent thereto, to prosecute her voyage, and the recaptors need not proceed to adjudication till *six months*, or the return of the ship to the port, from which she sailed: and by consent of the captors the cargo may be unloaded, and disposed of, before adjudication: and if the vessel does not return directly to the port of her departure, or the recaptors have had no opportunity to proceed to adjudication within *six months*, on account of the absence of the vessel, the Court of Admiralty shall, at the instance of the recaptors, decree restitution to the former owners, paying salvage, upon such evidence as shall appear reasonable, the expence of such proceedings not to exceed the sum of *fourteen pounds (q)*. Similar provisions were made at the beginning of the last war; and the same rate of salvage is fixed for his Majesty's hired armed ships, as for the royal navy *(r)*. A store ship

(n) 16 *Geo.* 3. *c.* 5. *s.* 24.
(o) 19 *Geo.* 3. *c.* 67. *s.* 44.
(p) 33 *Geo.* 3. *c.* 66. *s.* 42.
(q) 33 *Geo.* 3. *c.* 66. *s.* 44.
(r) 43 *Geo.* 3. *c.* 160. *s.* 39 & 41; 45 *Geo.* 3. *c.* 72. *s.* 7; and 48 *Geo.* 3. *c.* 132.

ship in the king's service, claiming salvage in the Court of Admiralty, is entitled to the same rate, and no higher, than a ship of war *(s)*.

A convoying ship may be entitled to this salvage, for the recapture of a vessel under its protection taken in that situation, and effectually possessed by the enemy *(t)*.

A ship once set forth and employed as a privateer or vessel of war falls within the exception, and is not to be restored upon recapture, although at the time of the recapture it may be employed purely as a merchant ship, carrying a cargo, without any commission of war, or any arms except a few muskets for self defence *(u)*. But the mere act of putting men on board a captured ship, which was armed at the time, and employing her as a cruizer, without a commission of war, does not bring the ship within the exception nor defeat the right of the original owner *(x)*.

If a ship captured by the enemy be voluntarily abandoned by him at sea after taking out the crew, either because he may be unable, or may not think it worth while to carry her into port, and be found and taken possession of by a *British* ship of war; this is not a recapture within the act of Parliament, and the Court of Admiralty is not restricted as to the rate of salvage, but may apportion it to the nature and merits of the case *(y)*.

A ship may be in the legal and constructive possession of the enemy, though not at the moment in his actual possession, and this will be sufficient to found a claim for salvage under the act of Parliament. This was held in the case of *a Portuguese* ship, which being on a voyage from *Pernambuca* to *Liverpool* with a cargo belonging to *British* and *Portugueze* merchants put into the port of *Muros* in *Spain*, in

(s) SEDULOUS, *Mills*, 1 Dodson, A. R. 253.

(t) The WIGHT, *Ford*, 5 Rob A. R. 215.

(u) L'ACTIF, *Lorrial*, 1 Edw. 185.

(x) The HORATIO, *Nelson*, 6 Rob. 320.

(y) The GAGE, *Mitchell*, 6 Rob. 273. The LAMBTON, Id. 275. *note*. and the LORD NELSON, 1 Edw. 79.

in consequence of having sustained damage at sea, and was in that port at the time when the *French* took possession of the place. The *French* withdrew to proceed on another expedition, but they were near at hand, and had it in their power to return, whenever they might think proper, and were not unlikely to do so: the principal persons of the place were in *their* interest, and it was not probable they would willingly have suffered such a ship and cargo destined for *England* to come away without molestation. In this state of things the ship was brought out of the port by the boats of a *British* frigate, when there were only four persons on board. The cause being in the *Prize* Court of Admiralty, the learned Judge made a decree for the rate of salvage under the statute; observing there was no doubt that the property had been rescued from considerable peril by the captain of the frigate, and that he was entitled to a remuneration of some kind or other, so that the only question was, whether this should be considered as a case of *military* salvage, or the parties be put to the expence of a fresh suit in the Instance Court *(z)*.

A *British* army acting in a foreign country, in conjunction with a native force, without the co-operation of a fleet, and liberating a port of the country from the hands of their common enemy, by operations on land, directed to that end near to and in the place, may be entitled to salvage under the statute on *British* ships found in the port, and on their cargoes whether actually on board at the time or landed and warehoused, thus rescued from the enemy: but not on the property of the natives of the country thus delivered, and which reverts to their possession and dominion. And if in such a case the masters of the *British* ships are allowed to bring their cargoes to *England*, under their own management, according to the original intention, the salvage is to be estimated upon the value in *England (a)*.

12. It

(z) The PENSAMENTO FELIZ, *Megalhaens*, 1 Edw. 115.

(a) The PROGRESS, *Barker*, 1 Edw. 210. The case arose out of the

12. It may be proper to mention in this place the practice of the Court of Admiralty in the case of the property of the allies of this country, taken at sea by a common enemy, and retaken by the subjects of this country. For this purpose I cannot do better than use the words of the learned Judge, who now presides in that Court. "The "maritime law of *England*," says Sir *William Scott*, "having adopted a most liberal rule of restitution on sal- "vage, with respect to the recaptured property of its own "subjects, gives the benefit of that rule to its allies, till "it appears that they act towards *British* property on a "less liberal principle; in such a case it adopts their rule; "and treats them according to their own measure of jus- "tice" *(b)*. In conformity to this rule the *San Jago* was not restored to the King of *Spain*, because retaken from his then enemy the *French* under circumstances, in which the *Spanish* Courts had condemned *British* property retaken by the *Spaniards*: and shortly afterwards two *Portugueze* ships were for the same reason condemned; and several others at the same time restored *(c)*, because in the interval between the different captures, an Ordinance of the Court of *Portugal* had altered the rule of restitution in that country; and they were restored upon payment of the rate of salvage established in *Portugal*; *viz. one-eighth* to King's ships, and *one-fifth* to privateers. Upon the same principle a *British* ship, which had been taken by the *French* and carried into *Pontevedra* in *Spain*, and condemned by the Prize Court at *Paris*, being afterwards seized as *French* property and sold under the orders of the Junta of *Gallicia*, then enemies of *France*, and allies of this country, and which came to *England* and was claimed by the original *British* owner, was not restored *(d)*. At a later period a *Spanish*

the recapture of *Oporto*. The reader will find much instruction from the perusal of the very learned judgment delivered in the cause.

(b) In the case of the SANTA CRUZ, 1 Rob. A. R. 63. The whole is a most finished model of judicial eloquence.

(c) Same case.

(d) The VICTORIA, 1 Edw. 97.

Spanish ship was restored on payment of *one-eighth* upon the ground of an article in a recent treaty between *Spain* and this country, providing for mutual restitution on salvage *(e)*. Of this principle of *British* jurisprudence, whatever attempts may be made to shake it from motives of public policy or private interest, reason must now declare, and posterity will hereafter confess, that it is founded on the immoveable basis of reciprocal justice. The right of recaptors to salvage is extinguished by a subsequent act of capture and condemnation by an enemy, but it must be a regular sentence of condemnation carried into execution; for if the sentence of the Prize Court be overruled by an order of release from the sovereign power of the state, the recaptors are not deprived of their right to salvage *(f)*.

13. If the property of a nation not engaged in hostility with the enemies of this country, happen to be taken as prize by them, and retaken out of their hands by his Majesty's subjects; the probability of its condemnation in the Courts of the country of the captors is to be considered: and unless there appear to be ground, on which it may be supposed that it would have been condemned in those Courts, it is to be restored *without the payment of any salvage*. Upon this ground an *American* ship carrying provisions and naval stores on the part of the *American* government, for the use of their fleet in the *Mediterranean*, was restored without any salvage on recapture from the *Spaniards (g)*. So an *American* ship which had been seized by the *French Douaniers* in the river *Yadhe*, and released upon giving bail by depositing a sum of money to answer the sentence of a Court of Prize, and which was brought out of the river by the boats of an *English* gun-brig, was restored without salvage; for it was considered that the ship

(e) San Francisco, *Du Paula*, 1 Edw. 279.

(f) Charlotte Caroline, *Ader.* 1 Dodson, A. R. 192.

(g) The Huntress, *Stinson*, 6 Rob. 104.

ship would have been free by reason of the security and deposit, even if sentence of condemnation should pass *(h)*. In the war preceding the last, the conduct of the cruizers and Prize Courts of *France*, having given reason to apprehend that neutral property arrested by the former on the high seas, would in almost all cases be condemned by the latter, salvage was usually allowed to recaptors of neutral property out of the hands of the *French* by our Court of Admiralty, and such allowance was not thought unreasonable by the neutral merchants: but this was treated as an exception to the general rule, founded on particular circumstances *(i)*. And in the last war it was allowed upon the recapture of *American* ships from the *French* and *Danes*, which were navigated without the certificates of origin required by the *French* decrees, and of which the condemnation was to be expected from the usual practice of *France* and *Denmark* on similar occasions *(k)*.

(h) The ROBERT HALL, *Randall*, 1 Edw. 265.

(i) The CARLOTTA, *Pasquel*, 5 Rob. A. R. 54. The ELEONORA CATHARINA, *Kreagh*, 4 Rob. A. R. 156. FANNY, *Lawton*, 1 Dodson, A. R. 443. This last was the case of neutral goods shipped in an *armed British* vessel, which was taken and retaken.

(k) The ACTEON, *Mason*, 1 Edw. 254.

CHAPTER THE ELEVENTH.

OF THE DISSOLUTION OF CONTRACTS FOR THE CARRIAGE OF GOODS IN MERCHANT SHIPS.

1. HAVING thus considered the several species of contract made for the carriage of goods in merchant ships, and the various duties arising therefrom, I proceed in the last place to the examination of the modes by which contracts of this nature may be dissolved. And these are, either the voluntary act of the contracting parties, or some extrinsic matter happening after the making of the contract and before its completion.

2. It is a general rule that whatever derives its force and validity from the consent of parties, may by the mutual consent of the same parties be rendered null and invalid. There is indeed a technical rule of the law of *England*, which requires the discharge of a person from a contract to be made by an instrument of as high a nature as the original instrument of contract: and this rule is applicable to the contract of affreightment by charter-party under seal; but in case of a discharge by mutual consent not expressed in this formal manner, the rule would at the utmost have no other effect than to render it necessary for the party to apply to a Court of Equity. In all such cases, however, prudence requires that the deed should be cancelled and delivered up.

But a merchant, who has laden goods, cannot insist upon having them relanded and delivered to him without paying the freight that might become due for the carriage of them, and indemnifying the master against the consequences of any bill of lading signed by him *(a)*. Indeed a master who has

(a) 2 Eq. Ca. Ab. p. 98. *Anon.*

has signed bills of lading cannot with prudence deliver back the goods without having all the parts of the bill of lading delivered up to him, for if any one part has been transmitted to a third person, such third person may have acquired an interest in the goods.

3. Another general rule of law furnishes a dissolution of these contracts by matter extrinsic. If an agreement be made to do an act lawful at the time of such agreement, but afterwards, and before the performance of the act, the performance be rendered unlawful by the government of the country, the agreement is absolutely dissolved. If, therefore, before the commencement of a voyage, war or hostilities should take place between the state to which the ship or cargo belongs, and that to which they are destined, or commerce between them be wholly prohibited, the contract for conveyance is at an end *(b)*, the merchant must unlade his goods, and the owners find another employment for their ship. And probably the same principles would apply to the same events happening after the commencement and before the completion of the voyage, although a different rule is laid down in this case by the *French* Ordinance *(c)*, as I have before observed. But if war or hostilities break out between the place, to which the ship or cargo belongs, and any other nation, to which they are not destined; although the performance of the contract is thereby rendered more hazardous, yet is not the contract itself dissolved, and each of the parties must submit to the extraordinary peril, unless they mutually agree to abandon the adventure.

So, if the government of the country, to which the ship and cargo belong, should prohibit the exportation of the particular commodities that compose the cargo, or by the terms of the contract are destined to compose it, (as is sometimes

(z) French Ordinance, liv. 3. tit. 1. *des Charte-parties*, art. 7. *Code de Com.* art. 276.

(a) Liv. 3. tit. 3. *Fret.* art. 15. See before, part. 3. ch. 7. sect. 5. and the *Code de Com.* art. 299.

sometimes done by all states with regard to provisions in a time of scarcity), in this case also it seems that the law of the country would give no damages to the owner against the merchant, who had been thus compelled by the law of the same country to abandon his engagement *(d)*, but the contract would be dissolved on both sides. On the other hand, if a merchant hire a ship to go to a foreign port, and covenant to furnish a lading there, a prohibition by the government of that country to export the intended articles, neither dissolves the contract, nor excuses a non-performance of it *(e)*; for the laws of one nation do not give effect to the positive institutions of another inconsistent with its own; and the different interests of nations sometimes render an act meritorious in one, which is prohibited by another in alliance with it, if the act be not contrary to the general law of nations, or to existing treaties; and the common exception of the restraint of princes and rulers applies only to the case of the master *(f)*. But in such a case, or if the default be owing to the personal neglect or inability of the freighter, and not to any general cause, the master, upon his arrival at the port of lading, should obtain another cargo, if possible, from other persons, and not sullenly hoist sail and depart, in order to charge the merchant with the whole freight. And if upon the ship's arrival he is informed that the merchant is unable to furnish the lading, he cannot, by waiting the time appointed in the charter-party, charge the merchant with the demurrage *(g)*. It has also been held, that a contract was not dissolved, nor a merchant excused for the non-performance of his covenant, by a prohibition of intercourse on account of an infectious disease *(h)*.

4. But

(d) By Lord *Ellenborough*, in *Barker* v. *Hodgson*, 3 M. & S. 267.

(e) *Blight & others* v. *Page*, Guildhall, Sit. after M. T. 1801, before Lord *Kenyon*, Ch. J. cited 3 Bos. & Pull. 295. *note* (a). and see *Sjoerds* v. *Luscombe*, 16 East, 201.

(f) *Blight & others* v. *Page*. And see also as to this point *Touteng & another* v. *Hubbard*, 3 Bos. & Pull. 298.

(g) *Blight & others* v. *Page*.

(h) *Barker* v. *Hodgson*, 3 M. & S. 267. quoted before, part 3. ch. 1. page 182.

4. But although contracts of this nature are dissolved by the breaking out of war or hostilities in the manner before mentioned, of which no person can foresee the termination; yet they are not dissolved by an embargo, or temporary restraint of their performance imposed by the government of the country, in whose ports the vessel may happen to be, as a measure of political caution in time of war, or upon the expectation of it, either in the lading port, or in a place, at which the ship may have touched in the course of her voyage *(i)*. This subject has received a judicial determination in the law of *England*. The case *(k)* was as follows: *Hadley*, the plaintiff, brought an action against *Clarke & others*, owners of the ship *Pomona*, for not carrying to *Leghorn* goods put on board the *Pomona* at *Liverpool* to be conveyed to *Leghorn*, the danger of the seas only excepted. The plaintiff had paid £.297. 18*s*. for insurance of the goods for the voyage. The ship sailed from *Liverpool*, and in pursuance of permission given for that purpose put into *Falmouth* on the 30th of *June* 1796, to wait for convoy. While she waited there for that purpose, an embargo was, by order of the King in council, dated 27th *July* 1796, laid on all ships bound to *Leghorn*, being one of the ports in the territories of the Grand Duke of *Tuscany*, then in the possession of the *French*. This embargo was directed to continue until further order of the board of Privy Council. On the 23d of *August* following another order of Council issued, allowing vessels in the situation of the *Pomona* to return to their ports of lading, and land and warehouse their cargoes there under certain regulations. In the month of *August* 1798, and not before, the *Pomona* left *Falmouth* without the consent of the plaintiff, and returned to *Liverpool*, where after some dispute the plaintiff received the goods without prejudice to the question, whether under the circumstances the

(i) French Ordinance, liv. 3. tit. 1. *des Charte-parties*, art. 8. and see liv. 3. tit. 3. *Fret.* art. 16. *Pothier*, Charte-partie, num. 100.

(k) Hadley v. *Clarke*, 8 Ter.Rep. K.B.259.

the defendants were excused for the non-performance of their contract. On the 24th of *October* 1798, the embargo was taken off. At the trial of the cause the plaintiff obtained the verdict of a jury for the amount of the charges of insurance. The right of the plaintiff to recover was afterwards solemnly discussed in the Court of King's Bench; and the Court was of opinion that the embargo did not dissolve the contract, being only a temporary restraint, and that the plaintiff had a right to recover. Before the commencement of the transaction between the parties, all intercourse with countries under the government of the *French*, during the then existence of hostilities between *France* and this country, had been prohibited by act of Parliament *(l)*; but this prohibition was also held to be only temporary with respect to *Leghorn*, and consequently not to alter the case.

In the case of an embargo, the *French* Ordinance expressly authorizes the merchant to unlade the goods at his own expence, if he thinks fit, upon condition to relade them or indemnify the master *(m)*; and *Valin (n)* and *Pothier (o)* declare it to be their opinion, that if the goods are of such a sort, that they will not keep during the period of the embargo, and cannot at its expiration be readily replaced by others of the like kind, the embargo will put an end to the contract. In such a case, whatever the rule of law may be, the interest of all parties will in general induce them to annul the contract upon reasonable terms.

4. *b.* But in the case of an embargo imposed by the government of the country, of which the merchant is a subject, *in the nature of reprisals and partial hostility* against the country, to which the ship belongs, the merchant may put an end to the contract, if the object of the voyage is likely to be defeated by the delay. Thus in the case of a *Swedish* ship, chartered by a *British* merchant to go from *London*

(l) 33 *Geo.* 3. c. 27. *s.* 3.
(m) Liv. 3. tit. 1. *Charte-parties*, art. 9.
(n) Tom. i. p. 628.
(o) *Charte-Partie*, num. 102.

London to *St. Michael*'s for a cargo of fruit, which having sailed on the voyage was driven back by contrary winds and forced into *Ramsgate* Harbour, and there stopped on the 15th of *January* 1801, by the embargo, imposed by the *British* government on all *Swedish* vessels; upon which the merchant applied to the captain to give back his letters of advice, who declined to do so, and who soon after the embargo was taken off, which happened in the following *June*, offered to proceed on the voyage, but was directed by the merchant not to do so, because the season for shipping fruit was then passed: the Court of Common Pleas held that the master could not maintain an action against the merchant for the non-performance of the contract (*p*). For otherwise a *British* subject would sustain the evils that the government of his country intended to inflict on *foreigners*; which is contrary to the principle now established in the law of insurance, *viz.* that the insurer is not answerable for a loss happening to *an enemy* by *British* capture in a course of hostilities, whether existing at the time of insurance, or taking place afterwards (*q*).

In the case of another *Swedish* vessel stopped under the same embargo, with a *British* cargo of fish on board, the cargo was taken out and restored; and upon the restoration of the ship the learned Judge of the Court of Admiralty held the merchant not to be liable to the freight, as I have mentioned before *(r.)*

(*p*) *Touteng & another* v. *Hubbard*, 3 Bos. & Pull. 291.

(*q*) *Furtado* v. *Rodgers*, 3 Bos. & Pull. 191. And *Kellner* v. *Le Mesurier*, *Gamba* v. *Le Mesurier*, and *Brandon* v. *Curling*, all three decided in the Court of King's Bench in Mich. Term. 1803, and reported, 4 East, 396. 407. 410.

(*r*) The ISABELLA JACOBINA, *Sovergreu*, 4 Rob. A. R. 77. cited before, chap. 7. of this part, sect. 15. *b.*

PART THE FOURTH.

OF THE WAGES OF MERCHANT SEAMEN.

CHAPTER THE FIRST.

OF THE HIRING OF SEAMEN.

SEAMEN employed in merchant ships are usually hired at a certain sum, either by the month, or for the voyage. In the former case the amount of the payment, that may be earned by them, depends upon the length of the voyage; in the latter it is fixed invariably without any regard to the duration of the voyage. In the fishing trade, particularly the whale-fishery, and in private ships of war, the seamen usually serve under an engagement to receive a certain portion of the profits of the adventure. Such an engagement is rather in the nature of a partnership than of a contract of hiring and service, and the objects of it do not properly fall under my consideration. An engagement to receive a certain part of the freight, to be earned by a merchant ship, which seems formerly to have been not unfrequent, is at present seldom, if ever made.

This last part therefore of the present Treatise will be employed in the consideration of contracts made for the employment of seamen by the month or for the voyage; of the earning and payment of wages in pursuance of such contracts; of the loss and forfeiture of wages; and of the modes of enforcing payment by the aid of Courts of Justice. Each of these topics will form the subject of a distinct chapter.

And

And FIRST, as to the *hiring* of seamen.

1. In order to prevent the mischiefs that frequently arose from the want of proper proof of the precise terms, upon which seamen engaged to perform their service in merchant ships, it is enacted by a statute made in the early part of the reign of King *George the Second*, "That it shall not "be lawful for any master or commander of any ship or "vessel, bound to parts beyond the seas, to carry any "seaman or mariner, except his apprentice or apprentices, "to sea from any port or place, where he or they were "entered or shipt, to proceed on any voyage to parts be-"yond the sea, without first coming to an agreement or "contract with such seamen or mariners for their wages; "which agreement or agreements shall be made in writing, "declaring what *wages* each seaman or mariner is to have "respectively, during the whole voyage, or for so long "time as he or they shall ship themselves for; and also "to express in the said agreement or contract *the voyage* for "which such seaman or mariner was shipt to perform the "same;" under a penalty of 5*l.* for each mariner carried to sea without such agreement, to be forfeited by the master to the use of Greenwich Hospital (*a*). This agreement is to be signed by each mariner within three days after he shall have entered himself on board the ship; and is, when signed, conclusive and binding upon all parties (*b*), but does not apply to a *British* seaman entering on board a *Foreign* ship in a *British* port (*c*). A subsequent statute has extended these provisions to all his Majesty's colonies in *America* (*d*). The statute requires the agreement to be signed only, and does not require it to be sealed. And at the trial of an action *upon the case* brought by a mariner for his wages against the master, (a form not applicable by

(*a*) 2 *Geo.* 2. *c.* 36. *s.* 1. Made perpetual by 2 *Geo.* 3. *c.* 31. A similar agreement is required by an act of congress of the United States of *America*, 1790, *c.* 29. *s.* 1.

(*b*) 2 *Geo.* 2. *c.* 36. *s.* 2.

(*c*) *Dickman* v. *Benson*, 3 Campbell, 290.

(*d*) 2 *Geo.* 3. *c.* 31. *s.* 2.

by the law of *England* to a contract *by deed*, at which it appeared that seals were affixed to the names of the plaintiff and other mariners, at the foot of the articles, which in other respects were in the usual form; the learned Judge, who tried the cause, held the form of action proper notwithstanding the seal *(e)*. A seal alone does not constitute a deed in the technical language of our law; *delivery* as a deed is essential to this purpose; but it did not appear that this instrument either had been, or was intended to be, so delivered.

By another statute a similar agreement in writing is required to be signed by the master and mariners of vessels of the burthen of one hundred tons or upwards, employed in the *coasting trade* from any port or place in *Great Britain*, to any other port or place in *Great Britain*, and going to *open sea (f)*: but by the terms of this statute, the contract is to specify for *what time or for what voyage or voyages* the mariner shall contract.

It is to be observed, that the only matters required to be specified by the first of these statutes, are the rate of *wages* and the *voyage*; many particular stipulations and clauses are introduced into the contracts in common use, the greater part of which are only descriptive of the general duties implied by law, though the reference usually made to the statute of the 37 *Geo.* 3, goes much further, and is calculated to apply to *all* voyages, the regulations introduced by the legislature for *West India* voyages only. In the construction of such contracts in the Court of Admiralty, the terms conclusive and binding mentioned in the statute are held to be confined to the two points mentioned therein, *viz.* the wages, and the voyage; and that Court will, as a Court of Equity, consider how far the other engagements are reasonable or not, and will bear in mind the general ignorance and improvidence of seamen, and their inability to appreciate

(e) Clement v. *Gunhouse*, at Guildhall, before *Chambre* J. 5 *Espinasse*, N. P. C. 83.

(f) 31 *Geo.* 3. *c.* 39. *s.* 1, 2 & 10. The agreement under this act need not be stampt. *sect.* 10.

appreciate the meaning and effect of a long and multifarious instrument *(g)*.

The statute requires the voyage to be mentioned, and this ought to be done with as much precision as can conveniently be introduced, and so as to give the mariner due notice of the adventure, on which he embarks. In the case of a ship bound to *New South Wales*, where the voyage was expressed to be to *New South Wales and India, or elsewhere*, and to return to a port in *Europe*, the present very learned Judge of the Court of Admiralty thought the words, *or elsewhere*, ought not to be taken in the indefinite latitude in which they were expressed, but must receive a reasonable construction conformable to a certain extent to the necessities of commerce, and would not authorize the master to proceed, as in fact he had done, from *Port Jackson* to *New Zealand* in search of a cargo, from thence to *Valparaiso*, and *Lima*, and *Otaheite*, and back to *Sydney Cove*, and from thence to *Calcutta (h)*. And in another case, where the voyage was expressed to be from *London* to *Batavia* to any ports and places, the *East India* seas, or elsewhere, and until her final arrival at any port or ports in *Europe*, it appearing to have been the intention of the owners at the commencement of the voyage, that the ship should return from *India* to *Cowes*, and there receive orders as to the port of discharge; the same learned Judge considered the description of the voyage much too general to answer the beneficial purposes intended by the statute requiring the voyage to be mentioned in the contract, and thought the intention to come to *Cowes* for orders, as to the port of delivery, ought to have been mentioned *(i)*.

2. With regard to ships trading to the *West Indies*, it is

(g) See the MINERVA, *Bell*, 1 Hag. A. R. 347. and the observations made by Lord *Stowell*, on the usual seamen's contract, in that case, and at the end of the case of the GEORGE HOME, *Young*, Id. p. 377.

(h) The MINERVA, *Bell*.

(i) The GEORGE HOME, *Young*. See also ELIZA, *Ireland*, 1 Haggard, A. R. 182. And COUNTESS OF HARCOURT, *Bunn*. Id. p. 248.

is by a late statute enacted, that after the *first* day of *July* 1797, every seaman, who shall desert at any time during the voyage either out or home from any *British* merchant ship trading to or from his Majesty's colonies and plantations in the *West Indies*, shall, over and above all punishments, penalties, and forfeitures, to which he is now by law subject, forfeit all the wages he may have agreed for, with, or be entitled to during the voyage, from, the master or owner of the ship, on board of which he should enter immediately after such desertion *(k)*.

The articles of agreement to be entered into between the master, seamen, and mariners of the ships, to which this statute relates, are thereby required to be to the purport and effect of the form annexed by way of schedule to the statute. This form is substantially the same as that, which previously was, and still continues to be, in common use for all ships employed in foreign trade; and as I shall frequently have occasion to refer to it, it will be printed in the *Appendix (l)*.

3. And by the same statute it is enacted, "That all and "every master or commander of *any British* merchant ship, "who shall from and after the first day of *July* 1797, hire "or engage to serve on board his ship or vessel, any sea- "man, mariner, or other person, who shall, to the know- "ledge of such master, have deserted from any other ship "or vessel, shall forfeit and pay the sum of *one hundred* "pounds" *(m)*. As this clause is expressed in general terms, and is not limited to ships engaged in the *West India* trade, either by direct reference to the preamble of the statute, or otherwise; it may perhaps be held to extend to all cases,

(k) 37 *Geo.* 3. c. 73. *s.* 1. This is a public act. The regulations made on this subject in *France* are mentioned in *Valin's Com.* on the *French Ordinance*, tom. 1. p. 535.

(l) See Appendix, No. V.

(m) 37 *Geo.* 3. c. 73. *s.* 2. The penalties imposed by this act, are to be distributed one-third to Greenwich Hospital, one-third to the Seamen's Hospital or fund at the ship's port, and one-third to the informer; and may be recovered by action in the Courts at *Westminster*; or such as do not exceed 20*l.* before a Justice of the Peace.

cases, and not to be confined to the masters of ships engaged in that trade.

4. By the same statute it is also enacted, "That no "master or commander of any merchant ship or vessel, "which shall, from and after the first day of *July* 1797, sail "or proceed from any port or place in *Great Britain*, shall "hire or engage, or cause or procure to be hired or engaged, any seaman, mariner, or other person, at any port "or place within his Majesty's colonies or plantations in "the *West Indies*, to serve on board any such merchant "ship or vessel, at or for greater or *more wages or hire* for "such service, than according to the rate of *double monthly* "*wages* contracted for with the seamen, mariners, and "other persons, hired or engaged to serve on board such "ship or vessel, at the time of her then last departure "from *Great Britain*, being in the same degree and station, "in which such seaman, mariner, or other person, shall be "so hired or engaged at any such port or place as aforesaid; unless the governor, chief magistrate, collector, or "comptroller, of such port or place in the said colonies or "plantations, shall think that greater or more wages or "hire, than double the monthly wages aforesaid, should or "ought to be given to such seaman, mariner, or other person, as aforesaid, and do and shall accordingly authorize "or direct the same to be given by writing under his hand; "that then and in such case the master or commander of "such ship or vessel shall and may be at liberty to pay, "and the seaman, mariner, or other person on board such "ship or vessel, to receive *such* greater or higher wages as "such governor, chief magistrate, collector, or comptroller, "shall *direct* as aforesaid;" and all contracts and securities entered into or given, contrary to the intent and meaning of this act, are made null and void to all intents and purposes; and the master or other person, who shall enter into, or give, or procure to be made, entered into, or given, any such contract or security, or who shall hire, or cause to be hired, any seaman or other person to enter on board, con-

trary to the intent and meaning of this act, or who shall pay or cause to be paid, any greater hire, wages, or other gratuity or advantage whatsoever, than is allowed or directed by this act, shall for every such offence forfeit *one hundred* pounds *(n)*.

It is provided nevertheless, "That nothing in this act "shall extend, or be construed to extend, to any contract "or agreement, which shall or may be made with any "seaman, mariner, or other person, hired or engaged to "serve on board any merchant ship or vessel at any port "or place within his Majesty's colonies or plantations in "the *West Indies*, who shall at the time of such hiring or "engagement produce and deliver to the master and com-"mander of such ship or vessel a certificate under the "hand of the master or commander of the ship or vessel, "on board of which such seaman, mariner, or other person, "had then last served, signed in the presence of one or "more witness or witnesses, stating their usual place or "places of abode, thereby declaring or certifying that such "seaman, mariner, or other person, had been duly dis-"charged from the ship or vessel, on board of which he "had so last served; and which certificate the said master "or commander shall grant within three days next after "application made to him by such seaman, mariner, or "other person, before a witness, or in default thereof shall "forfeit and pay the sum of *twenty pounds*, to be levied, "recovered, and applied in manner hereinbefore directed; "nor to any contract or agreement to be made with any "seaman, mariner, or other person, hired or engaged to "serve on board any merchant ship or vessel, which through "necessity, or on account of very hazardous service, or "extraordinary duty, require such contract or agreement "to be made, or more wages or hire given, and of which "necessity, service, or extraordinary duty, proof shall be "made on oath before the chief magistrate or principal "officer

(n) 37 *Geo.* 3. *c.* 73. *s.* 3

" officer of any port or place, or before any Justice or " Justices of the Peace of the said colonies or plantations; " and provided also that such seaman, mariner, or other " person, so hired or engaged to serve on board any ship " or vessel so requiring such service, shall not have deserted " from the ship or vessel on board of which he had then " last served; and provided also, that no greater wages or " hire shall be given by any master or commander, or taken " or received by any seaman, mariner, or other person, as " aforesaid, except in cases of such necessity, very hazar- " dous service, or extraordinary duty, as aforesaid, than " after the rate of double the monthly wages, or the wages " to be settled or directed by any governor, chief magistrate, " collector, or comptroller, as hereinbefore directed, to be " paid or received as aforesaid" *(o)*.

It is difficult to collect the real intention of the legislature from this long and confused proviso. If as at first sight appears, it was intended to allow the master to give more than double wages without the authority of a magistrate in *two* cases; namely: *first*, to mariners producing a certificate of discharge from their last ship; and, *secondly*, in the case of necessity, hazardous service, or extraordinary duty, proved upon oath, to mariners, who have not deserted from their last ship; then the *last* part of the clause will be ineffectual. If, on the other hand, it was intended to allow this power to the master only in the case of necessity, &c. so proved, and to mariners who have not deserted, then the *first* part of the clause will be ineffectual.

5. Soon after the passing of this statute, it was decided that a licence given by a magistrate in the *West Indies*, to the master of a ship, " *to procure men on such terms, as he* " *could, to navigate the ship home*," was not a compliance with the regulation prescribed, and that a mariner could not maintain an action on a promise made in pursuance of such licence to pay wages exceeding in amount double the wages

(o) 37 *Geo.* 3. *c.* 73. *s.* 10.

wages agreed to be given to a person in the like situation on the outward voyage: for that the statute required the magistrate to exercise his own discretion as to the rate of wages to be paid, and to specify the same in the licence *(p)*.

7. The statutes do not render a verbal agreement for wages absolutely void; but impose a penalty on the master, if a written agreement is not made. When a written agreement is made, it becomes the only evidence of the contract between the parties; and a mariner cannot recover any thing agreed to be given in reward for his service, which is not specified in the articles: this has been decided with respect to a promise to pay to the mate of a ship employed in the slave trade, the average price of a slave at the place of the ship's destination *(q)*; and also with respect to a promise to pay to a sail-maker, serving in a ship belonging to the *East India* Company, a monthly sum beyond the wages mentioned in the ship's articles, which had been signed by him as sail-maker *(r)*.

8. A seaman, who has engaged to serve on board a ship, is bound to exert himself to the utmost in the service of the ship; and therefore a promise made by the master *when a ship was in distress*, to pay an extra sum to a mariner as an inducement to extraordinary exertion on his part, was at a trial before the late Lord *Kenyon* esteemed to be wholly void *(s)*. So where two of the crew deserted in the course of a voyage, and the master having in vain attempted to supply their places at *Cronstadt*, entered into an agreement with the rest of the crew at that place, to divide among them the wages of the deserters, if he should not be able to procure two other men at *Gottenburgh*, which in fact he could not do, Lord *Ellenborough* decided that the engagement was wholly void. It was attempted to distinguish this

(p) Rodgers v. *Lacy*, 2 Bos. & Pull. 57.

(q) White v *Wilson*, 2 Bos. & Pull. 116, and the ISABELLA, *Brand*, 2 Rob. A. R. 241.

(r) Elsworth & Wife v. *Woolmore*, Guildhall, Sit. Dec. 1803, before Lord *Alvanly*, Ch. J. There is a note of this case in Mr. *Espinasse*'s N. P. C. vol. 5. p. 84.

(s) Harris v. *Watson*, Peake's N. P. Cases, 72.

this case from the foregoing by suggesting that the agreement was made on shore, when the master could not be supposed to be under any restraint or apprehension, and not at sea, in a moment of peril, like the former case: an obvious answer to this would be, that if the master had not been apprehensive of further desertion, he would not have made such a promise; but the Chief Justice, in his own manly and dignified manner, decided the case upon the general ground. "There was," said his Lordship, "no considera-" tion for the ulterior pay promised to the mariners, who " remained with the ship; before they sailed from *London*, " they had undertaken to do all they could under all the " emergencies of the voyage; they had sold all their ser-" vices till the voyage should be completed." "The deser-" tion of a part of the crew is to be considered an emergency " of the voyage as much as their death, and those who " remain, are bound by the terms of their original contract " to exert themselves to the utmost to bring the ship in " safety to her destined port" *(t)*.

9. In this, as in all other cases, an engagement for service, made in contravention of the rules of the Common or Statute Law, will be void *(u)*.

(t) Stilk v. *Myrick*, 2 Camp. 317. See also *Thompson* v. *Havelock*, 1 Camp. 527. quoted before, part 2. ch. 4. sect. 1. *b*. page 132.

(u) The VANGUARD, *Pince*, 6 Rob. 207.

CHAPTER THE SECOND.

OF THE EARNING AND PAYMENT OF WAGES.

I PROPOSE in the present chapter to consider, FIRST, the cases in which the *whole* wages agreed to be given to seamen are to be paid; SECONDLY, the cases in which a *part* only is to be paid; and, LASTLY, the *time* at which the payment is to be made. All that is said in this and the following chapter respecting seamen, is to be understood of all the officers in the ship, except the master, and of him also, if the subject is not inapplicable to his situation and character.

1. FIRST, it is obvious, that a seaman who has faithfully performed his service on board a ship during the whole period of the intended voyage, is entitled to receive the whole of the stipulated reward, if no disaster has rendered his service useless or unproductive to his employer. And as a seaman is exposed to the hazard of losing the reward of his faithful service during a considerable period in certain cases, so on the other hand the law gives him his whole wages, even when he has been unable to render his service, if his inability has proceeded from any hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage *(a)*. And if a master, in violation of his contract, discharges a seaman

(a) Laws of *Oleron*, art. 6 & 7. of *Wisbuy*, art. 19. of the *Hanse-Towns*, art. 39 & 45. same of the year 1614, tit. 14. art. 1. *French Ordinance*, liv. 3. tit. 4. *Des Loyers des Matelots*, art. 11. *Code de Com.* art. 262. *Chandler* v. *Grieves*, 2 Hen. Blac. 606. *note (a)*, and by Lord *Mansfield*, in the case of *Paul* v. *Eden*, in the King's Bench, E. T. 25 *Geo.* 3.

a seaman from the ship during a voyage, the seaman will be entitled to his full wages up to the prosperous determination of the voyage, deducting, if the case require it, such sum as he may in the meantime have earned in another vessel *(b)*. The *French* Ordinance adds, that in such cases the master shall not charge the owners with the payment *(c)*. A seaman is to be found with provisions as long as he remains on board, and is willing to do his duty; if there be a want of sufficient provisions, it is a sufficient justification for his leaving the vessel, and will not deprive him of his right to his wages *(d)*.

Since the former editions of this Treatise, the novel case has been presented to the Court of Admiralty of a woman applying for wages for service performed on board a ship. The claim was made for work in two capacities; one as cook and steward, the other as keeper of the ship and her stores, in harbour or dock; the claimant had acted also as mariner in a great degree. After the performance of the service, payment was resisted, on the ground of the sex of the applicant. The learned Judge who presides in that Court, said, that the material point for the Court to look to, was the work done; for supposing an informality in the mode of hiring, still, if the work had been done, and properly done, it entitled the performer to the common remuneration for such employment *(e)*.

1. *b*. In the discussion of the cases that arose on the detention of the *British* ships in *Russia* by the Emperor *Paul* in the year 1800, it was admitted in both Courts, that in the ordinary case of an embargo, a seaman hired by the *month*, and remaining with the vessel, has a right to his wages during the embargo, if the ship afterwards perform her

(b) *Robinet* v. *The ship* EXETER, 2 Rob. A. R. 261. The BEAVER, *Grierson*, 3 Rob. A. R. 92. *Roccus*, not. 43. Old *Hanseatic* Ordinance, art. 42. *Hanseatic* Ordinance of 1614, tit. 3. art. 7.

(c) Liv. 3. tit. 4. *Loyers des Matelots*, art. 10. and also the *Code de Com.* art. 270.

(d) CASTILIA, *Stewart*, 1 Haggard, A. R. 59. See also ELIZA, *Ireland*. Id. p. 186.

(e) JANE & MATILDA, *Chandler*, 1 Haggard, A. R. 187.

her voyage and earn her freight *(f)*. The circumstances of that detention were very peculiar. The cases will be more fully stated, when I come to the consideration of the loss of wages *(g)*.

2. SECONDLY: it was determined before the passing of either of the statutes, which regulate the service of seamen in merchant ships, that a seaman, who was impressed from such a ship into the royal service, was entitled to receive a proportion of his wages up to the time of impressing, *the ship having afterwards arrived in safety at her port of discharge (h)*. It has also been since decided that he is entitled to no more *(i)*. The first of those statutes expressly provides, that a seaman belonging to any merchant ship, who enters into the service of his Majesty on board any of his Majesty's ships, shall not for such entry forfeit the wages due to him during the term of his service in the merchant ship, nor shall such entry be deemed a desertion *(k)*. It has also been decided, that a seaman belonging to a privateer, who was to have a certain share of prizes in lieu of wages, and who had engaged to serve full six months on pain of forfeiting such share, did not lose his share of a prize taken while he was in the privateer, by being afterwards impressed, and then accepting the bounty, and entering on board one of his Majesty's ships before the expiration of the six months *(l)*. But entering, or being impressed into the King's service, does not give the mariner an *absolute* right to his wages up to the time, nor place him in a better condition as to such wages, than he would be, if he had remained on board the ship; and therefore, if the ship be afterwards captured, he loses his wages in common with those whom he leaves behind *(m)*.

3. If

(f) *Beale* v. *Thompson*, 3 Bos. & Pull. 405. and 4 East, 546.

(g) Chap. 3. of this part, s. 2. *b.*

(h) *Wiggins* v. *Ingleton*, 2 Ld. Raym. 1211.

(i) *Clements* v. *Mayborn*, in the King's Bench, Trin. T. 24 *Geo.* 3.

(k) 2 *Geo.* 2. *c.* 36. *s.* 13.

(l) *Paul* v. *Eden*, in the King's Bench, E. T. 25 *Geo.* 3.

(m) Anon. 2 Camp. 320, note.

3. If a seaman falls sick and dies during the voyage, the laws of *Oleron (n)*, of *Wisbuy (o)*, and of the *Hanse Towns (p)*, direct that his wages shall be paid to his heirs, in general words, without distinction as to the terms upon which he was hired: and it is not clear whether the payment thus directed, is to be understood of a sum proportionate to the time of his service, or of the whole sum that would have been earned if he had lived to the end of the voyage. The *French* Ordinance distinguishes between the case of a hiring by the *month*, and a hiring for the *voyage*; and in the first case directs the payment of wages up to the day of the death of the seaman: in the last case, it directs the payment of half the stipulated sum, if a seaman dies on the voyage outward, and the whole if he dies on the voyage homeward *(q)*. A similar rule had been laid down in the case of a hiring by the voyage, in the Ordinance of the Emperor *Charles the Fifth (r)*, which regulated the commerce of the Low Countries; and *Cleirac* and *Valin (s)* say, that the same rule was established by the *Consolato del mare*. There is no general decision on this subject in our law books; but the legislature appears to have considered that some wages might be owing to seamen, who died in the course of a voyage *(t)*; and in the case which I am about to quote, it seems to have been admitted, that the representatives of a seaman hired by the *month*, would be entitled to a proportion of wages to the time of his death. The facts of the case referred to were very particular, and the decision turned upon them. Before the passing of the statute *(u)*, which limits the wages to be given to persons for navigating a ship back from the *West Indies* to this country,

(n) Art. 7. *(o)* Art. 19.
(p) Art. 45.
(q) Liv. 3. tit. 4. *Loyers des Matelots*, art. 13 & 14. The same rule is laid down in the *Code de Com.* which also gives half the wages, if the mariner dies at the outward port, art. 265.

(r) *Cleriac* on the 7th article of the laws of *Oleron*.
(s) On the *French* Ordinance, ubi supra.
(t) 37 *Geo.* 3. *c.* 73. *s.* 7. and 6 *Geo.* 4. *c.* 107. *s.* 15.
(u) 37 *Geo.* 3. *c.* 73. *s.* 3.

country, one *Cutter* was hired as second mate on a voyage from *Jamaica* to *Liverpool*; and at *Jamaica*, the master subscribed and delivered to him the following note. "Ten "days after the ship G. P. myself master, arrives at *Li-* "*verpool*; I promise to pay to *Mr. T. Cutter*, the sum of "30 guineas, provided he proceeds, continues, and does "his duty as second mate in the said ship, from hence to "the port of *Liverpool*. *Kingston*, July 31st, 1793." The ship sailed from *Kingston* on the 2d of *August*, and arrived at *Liverpool* on the 9th of *October*. *Cutter* went on board the 31st of *July*, sailed in the ship, and proceeded, continued, and did his duty as second mate until his death, which happened on the 20th of *September*. It was proved, that the wages usually paid to a second mate of a ship on such a voyage, if hired by the month out and home, were 4*l*. per month: that when seamen were shipped by the run from *Jamaica* to *England*, a gross sum was usually given; and that the usual length of a voyage from *Jamaica* to *Liverpool* was about *eight* weeks. The executrix of *Cutter* brought an action against the master, and it was contended on her behalf, that she ought to recover a proportion of the wages for that part of the voyage that he lived, and served on board the ship. The Court of King's Bench, before which this question was brought for decision, directed inquiry to be made as to the usage among merchants, &c. in cases of this kind; but no satisfactory information being obtained as to the usage, although such notes had been often given, the Court, upon consideration of the particular terms of the note, and of the great excess of the sum to be paid to *Cutter*, if he had performed the whole voyage according to those terms, above the usual rate of wages upon a monthly hiring, decided that nothing was payable for the partial service: declaring at the same time, that if the plaintiff could have proved a usage to pay a proportional sum in similar cases, their decision should have been conformable to the usage *(x)*. In

(x) Cutter v. *Powell*, 6 Ter. Rep. K. B. 320.

In a subsequent case also it was taken for granted, that some wages were due to the mate of a *West India* ship, who had died on the homeward voyage. The master had, in pursuance of the directions of the statutes before mentioned *(y)*, paid to the receiver of the sixpenny duty for Greenwich Hospital the sum of 9 *l.* as the full amount of the wages due. The administratrix of the deceased, contending that more than 9 *l.* was due, brought an action against the master, who insisted that as he had accounted upon oath according to the directions of the statute, the amount of the sum due, could not be questioned in such an action, but he must be sued for the penalty given by the statute, if his account was false. But the Chief Justice of the Court of Common Pleas (Sir *James Mansfield*) before whom the cause was tried, and afterwards the whole Court, held that the statute did not deprive the administratrix of her right to sue the master for all that was justly due beyond the sum paid to the officer, and as the jury had found 25 *l.* to be due, she was allowed to recover 16 *l.* *(z)*.

4. The payment of wages is generally dependent upon the payment of freight: if the ship has earned its freight, the seamen, who have served on board the ship, have in like manner earned their wages. And as in general, if a ship destined on a voyage out and home has delivered her outward bound cargo, but perishes in the homeward voyage, the freight for the outward voyage is due, so in the same case the seamen are entitled to receive their wages for the time employed in the outward voyage and the unloading of the cargo, unless by the terms of their contract the outward and homeward voyages are consolidated into one *(a)*. And if a ship sails to several places, wages are payable to the time of the delivery of the last cargo. Upon the same principle, where money had been advanced to the owners

(y) 37 *Geo.* 3. *c.* 73. *s.* 7. and 6 *Geo.* 4. *c.* 107. *s.* 15.

(z) *Armstrong* v. *Smith*, 1 Bos. & Pull. N. R. 299.

(a) *Anonymous*, 1 Ld. Raym. 639. 739. 12 Mod. 408. Ordin. of *Rotterdam*, art. 214. 2 *Magens*, 113.

owners in part of the freight outward, and the ship perished before her arrival at the port of delivery, it was held that the seamen were entitled to wages in proportion to the money advanced (*b*). If, as sometimes happens, a charter-party be so framed as to exclude the owners from demanding freight for the carriage of the outward-bound cargo, unless the ship brings back her homeward-bound cargo in safety, it seems that such a special agreement, whereby the owners consent to relinquish a benefit, to which they are entitled by the general principles of law, ought not to affect the seamen, or deprive them of their general right, unless *they* also by the terms of their contract make the like engagements on their part. Indeed it was once decided in the Court of Admiralty that the seamen, who had navigated a ship chartered by the *East India* Company, and which had delivered her outward-bound cargo in the *East Indies*, but was lost in the homeward voyage, were entitled to recover wages for the outward voyage from the master, although the owners had covenanted with the Company not to demand any freight beyond the imprest money, of which the seamen had received their share, unless the ship returned home in safety; and although the mariners themselves had given bonds to the master to the same effect with regard to their wages (*c*). And Chief Justice *Holt* is said to have decided a cause tried before him in the same manner (*d*). But this decision of the Court of Admiralty is reported to have been disapproved of by the House of Lords, who in a case arising out of it between the master and the owners, gave liberty to the parties to appeal to the Delegates against the decision (*e*). Indeed I am at a loss to find any principle upon which the Court of Admiralty could have held these bonds to have been void, and have thought the seamen entitled to more than a proportion of the advance money, unless the bonds were deemed to have been obtained

(*b*) *Anon.* 2 Show. 283.
(*c*) *Buck* v. *Rawlinson*, 1 Bro. P. C. 102.
(*d*) *Edwards* v. *Child*, 2 Vern. 727.
(*e*) *Buck* v. *Rawlinson*, 1 Bro. P. C. 102.

obtained by oppression or fraud. It has of late years been usual to stipulate by express terms in the articles of agreement signed by the seamen employed in such ships, that in case the ship shall by the danger of the sea, or any other accident whatsoever, be disabled or lost during the voyage, for which she is destined, so that she do not return to and arrive at the port of *London*, the seamen shall not receive or claim any further wages than the impress money paid to them in advance, notwithstanding the ship shall at any time, before her being so disabled or lost, have broke bulk, or delivered any goods, at any port or place whatsoever. And there is no instance of a claim made by the seamen against the terms of this clause in the articles.

4. *b.* By articles of agreement in the usual form *(f)* and containing the common stipulation, that "no seaman shall "demand or be entitled to his wages, or any part thereof, "until the arrival of the said ship at her above-mentioned "*port* of discharge, and her cargo delivered;" it was stated that the ship was bound for the ports of *Madeira*, any of the *West India* islands or *Jamaica*, and to return to *London*; and in consideration of the monthly or other wages therein mentioned, the seamen severally undertook to perform *the above-mentioned voyage*, and the master agreed with and hired them for the *said voyage*. The ship sailed from *London* with a full cargo for *Madeira*, and delivered it there, and took in a full cargo of wine: and sailed for the *West Indies*. Part of the wine was delivered at *Dominica*, and another part at *Kingston* in *Jamaica*, and at this latter place the ship took in some Government stores for *Port Anthonio* in *Jamaica*, which she delivered there, and then proceeded to *Martha Bray* in the same island, where she delivered the remainder of the wine, and took in her cargo for *London*; for which place she soon afterwards sailed, but was lost on the voyage home. One of the seamen who had been hired at monthly wages, brought an action, contending that the voyage

(f) Appendix, No. V.

voyage was divided into three distinct parts, *viz. Madeira*, the *West Indies*, and *home*, and that as freight had been earned for the two first parts, he was entitled to his wages up to the time of the ship's departure from *Martha Bray*. But the Court holding that the port of discharge mentioned in the articles meant *London*, determined that by reason of the special stipulation he could recover nothing *(g)*.

5. If after the hiring of seamen, the owners of a ship do not think proper to send her on the intended voyage, the seamen are to be paid for the time during which they may have been employed on board the ship *(h)*. And if they sustain any special damage by breaking off the contract, it seems reasonable also that they should recover such damage by an action upon the agreement. The *French* Ordinance also directs the payment of wages for the time employed in equipping the ship in two other cases *(i)*, which I do not find mentioned in the more ancient sea laws; these are, the prohibition of commerce by the government of the country, to which the ship belongs, with the country to which it is destined, (which must always take place if a war happens between the two countries) and an embargo imposed in the lading port. The latter case does not in general dissolve the contract between the owners and the merchant by the law either of *France* or *England*, as I have already mentioned *(k)*, yet it may be reasonable on such an occasion to discharge the greater part of the mariners, who may readily find in other ships an employment equally beneficial to themselves, and are therefore not likely to sustain or recover special damage to any considerable amount by the non-performance of the contract made with them. But if they continue with the ship, they will, if hired by the *month*, be entitled to their wages during the period of detention *(l)*.

6. In

(g) Appleby v. *Dods*, 8 East, 300.
(h) Wells v. *Osman*, 2 Ld. Raym. 1044.
(i) Liv. 3. tit. 4. *Loyers des Matelots*, art. 4 & 5. *Code de Com.* art. 253.
(k) Ante, part 3. ch. 11. s. 4.
(l) Beale v. *Thompson*, 3 Bos. & Pull. 405. In the case of arrest during the voyage, the *Code de Com.* gives to seamen hired by the month half their wages during the detention, art. 254.

6. In the case of shipwreck it is the duty of the seamen to exert themselves to the utmost to save as much as possible of the vessel and cargo. If the cargo is saved, and a proportion of the freight paid by the merchant in respect thereof, it seems upon principle that the seamen are also entitled to a proportion of their wages, and this is expressly directed by the *French* Ordinance *(m)*. And for their labour in saving the cargo or the remains of the ship, they as well as other persons, may be entitled to a recompence by way of salvage, if the circumstances do not entitle them to wages. By the laws of *Oleron (n)*, if in the case of shipwreck "the seamen preserve a part of the ship and "lading, the master shall allow them a reasonable consi- "deration to carry them home to their own country: and "in case they save enough to enable the master to do this, "he may lawfully pledge to some honest persons such "part thereof as may be sufficient for the occasion." By the laws of *Wisbuy (o)*, "the mariners are bound to save "and preserve the merchandize to the utmost of their "power, and whilst they do so, (*ce faisant*, according to the "*French* translation), ought to be paid their wages, other- "wise not." By the *Hanseatic* Ordinance *(p)*, "if a ship "happens to be cast away, the mariners are obliged to save "as much as in them lies, and the master ought to requite "them for their pains to their content, and convey them at "his own charge to their dwelling places; but if the ma- "riners refuse to assist the master, in such case they shall "have neither reward nor wages paid them." It is not quite clear from the language of these ancient Ordinances, whether the payment directed to be made to seamen on those melancholy occasions, is to be a reward only for their labour in the salvage, or a recompense for their former services in the ship. But *Cleirac* in his commentary on the laws of *Oleron*

(m) Liv. 3. tit. 4. *Loyers des Matelots*, art. 9.
(n) Art. 3
(o) Art. 15. According to the translation in *Malyne*.
(p) Art. 44.

Oleron (q) says, that by an Ordinance of *Philip the Second* of *Spain*, made in the year 1563 *(r)*, it is ordained, that the seamen shall save as much as they can from shipwreck, and in that case the master is bound to pay them their wages, and to give them a further reward for their labour out of the goods. And the *Hanseatic* Ordinance of the year 1614 *(s)* expressly directs, that if so much of the ship be saved as equals the value of the wages of the seamen, they shall be paid their whole wages. In like manner the Ordinance of *Rotterdam (t)*, and the *French* Ordinance *(u)*, also expressly direct the payment of wages out of the relicts and materials of the ship.

There was not until very lately any known decision of a *British* Court on this point. But the question having been brought before the Court of Admiralty, in a case where the parts of a stranded ship were sold for more than sufficient to pay the wages of the seamen, no part of the cargo having been saved, and the seamen having exerted themselves very laboriously to save the parts of the ship, and not having departed until they were dismissed by the master, the learned Judge of that Court, after reviewing and commenting upon the several foreign authorities on the subject, admitted the claim of the seamen, who thereupon received their wages from the owners *(x)*.

7. LASTLY. As to the *time* of payment.

By the articles of agreement annexed to the statute *(y)*. made for preventing the desertion of seamen from ships trading to the *West Indies*, and which are in common use for other voyages also, it is stipulated, that the seamen shall not demand or be entitled to any part of their wages until

(q) Art. 3.
(r) Tit. *Average*, art. 12.
(s) Tit. 9. art. 5.
(t) Art. 219. 2 *Magens*, 114.
(u) Liv. 3. tit. 4. *Loyers des Matelots*, art. 9. and *Valin* thereon; and see *Code de Com.* art. 259.

(x) NEPTUNE, *Clark*, 1 Hag. A. R. 227. The judgment of Lord *Stowell* is peculiarly worthy the attention of the reader.

(y) 37 *Geo.* 3. c. 73.

until the arrival of the ship at the intended port of discharge, and delivery of her cargo, nor in less than *twenty days* if they are not employed in such delivery. The port of discharge here mentioned seems by the form of the articles to be the foreign port, to which the outward-bound cargo is destined: but I rather conceive it to be meant of the port of discharge and delivery at the ship's return to this country; for, unless the voyage and stipulated service of the seamen terminate at the foreign port, only *half* the wages then due can be paid there; the legislature having enacted as a general law, "That no master or owner of any merchant ship "or vessel shall pay or advance, or cause to be paid or "advanced, to any seaman or mariner, during the time "he shall be in parts beyond the seas, any money or effects "upon account of wages, exceeding *one moiety* of the "wages, which shall be due at the time of such payment, "until such ship or vessel shall return to *Great Britain* or "*Ireland*, or the plantations, or to some other of his Majesty's dominions, whereto they belong, and from whence "they were first fitted out; and if any such master or "owner of such merchant ship or vessel shall pay or advance, or cause to be paid or advanced, any wages to "any seaman or mariner above the said moiety, such "master or owner shall forfeit and pay *double* the money "he shall so pay or advance, to be recovered in the High "Court of Admiralty by any person who shall first discover "and inform of the same" *(z)*.

Policy requires that the wages of seamen should not be paid to them in foreign countries, as well to prevent desertion, as to preserve, for the benefit of their families, the money, that might otherwise be spent in idleness and debauchery. The *French* Ordinance, so often quoted, has made

(z) 8 *Geo.* 1. *c.* 24. *s.* 7. This statute was made perpetual by 2 *Geo.* 2. *c.* 28. *s.* 7. A similar provision is contained in the 12th section of the statute 12 *Geo.* 2. *c.* 30. with respect to ships licensed to carry sugar from his Majesty's sugar colonies in *America* to foreign parts of *Europe*.

made no provision on this subject, but according to *Pothier* the defect was supplied by subsequent Ordinances in that country, which prohibited the payment of wages in places, to which the ship did not belong, without the consent of the *French* consul in a foreign country, and in *France* of the officers of the classes *(a)* The *Code de Commerce* does not appear to contain any regulation on this subject. The ordinance of *Rotterdam (b)* having enacted, " That " the *full* wages of the ship's company shall always be " deemed to be earned, whether one or more complete " voyages have been made in foreign parts, even though " the ship should afterwards happen to be lost," adds, " that the master shall be obliged to pay to his people " every time, if they require it, at least the *half*;" " but " that when any dispute arises, they shall not go to law " in foreign parts, nor give one another any trouble, on " forfeiture of what wages or monthly pay shall remain " unpaid." By the articles of agreement for service in a *Dutch* ship, which were proved in evidence at the trial of an action, brought in this country by a seaman against the master for wages *(c)*, it was stipulated, that in case one or more complete voyages should be made out of the country, the master should at every *second* place of delivery secure to the seamen *two-thirds* of their wages by an order on his purser or correspondent at *Rotterdam*; but that none of the seamen should institute sny suit against the master in foreign countries. By the articles of agreement made at *Altona* for service in a *Danish* ship, which were proved in the like manner at another trial *(d)*, it was stipulated that no

(a) Pothier, *Louage des Matelots*, sect. 2 § 3.

(b) 2 *Magens*, 113, 114.

(c) *Geinar* v. *Meyer*, 2 Hen. Blac. 603. In consequence of the concluding clause of these articles, it was held that the action could not be maintained, although the vessel had been seized by an English ship, brought into this country, and sold here, under the authority of the government; the master and crew not being made prisoners. See also *Johnson* v. *Machielsne*, 3 Camp. 44.

(d) *Hulle* v. *Heitman*, at Guildhall, coram *Le Blanc*, J. Sit. p. M. T. 1801.

no one should demand any money, while abroad, from the master, but every one should content himself with the money received upon hand, until the completion of the voyage to the satisfaction of the master and his owners, and until such time as the ship should have arrived at *Altona*; and it should at all times be at the option of the master to give them money while abroad, or not.

By the law of *America* a seaman is entitled to receive *one-third* of his wages due to him at every port, where the ship unlades, and delivers her cargo before the voyage is ended, unless the contrary is expressly stipulated in the contract *(e)*.

Some cases relating to *foreign* seamen will be mentioned hereafter *(f)*.

8. The *time* of payment of wages is also regulated and enforced by the statues before referred to.

Thus, as to ships engaged in *foreign voyages*, it is enacted, that upon the arrival of any ship in *Great Britain* from parts beyond the seas, the master or commander shall be obliged to pay the seamen thereto belonging their wages, if demanded, in *thirty days*, after the ship's entry at the Custom-house, except in case where a covenant shall be entered into to the contrary, or at the time the seamen shall be discharged, which shall first happen, if demanded, deducting the penalties and forfeitures imposed by the act, "under the penalty of paying to each seaman or mariner, "that shall be unpaid, contrary to the intent and meaning "of this act, *twenty shillings* over and above the wages "that shall be due to each person, to be recovered by "the same means and methods as the wages may be re-"covered; and such payment of wages aforesaid shall be "good and valid in law, notwithstanding any action, bill "of sale, attachment, or incumbrance whatsoever" *(g)*.

And as to ships employed in the *coasting trade* in the manner

(e) Acts of *Congress* of 1790, c. 29. s. 6.

(f) Post ch. 4. s. 2. *b*.

(g) 2 *Geo.* 2. c. 36. *s.* 7.

manner before mentioned, it is enacted, that the master, commander, or person having charge of the ship, shall be obliged to pay the seamen their wages, if demanded, within *five days* after the ship shall be entered at the Custom-house, or the cargo be delivered, or at the time the seamen shall be discharged, which shall first happen, unless an agreement shall have been made to the contrary, in which case the wages shall be paid according to such agreement, deducting in every case the penalties imposed by this act, under the like forfeiture of *twenty shillings*, to be recovered in the same manner as with regard to ships coming from abroad; and such payment shall be good in law, "notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever" *(h)*.

(h) 31 *Geo.* 3. *c.* 39. *s.* 5.

CHAPTER THE THIRD.

OF THE LOSS AND FORFEITURE OF WAGES.

THE Wages of seamen, whether hired by the month or for the voyage, are sometimes lost without any fault on their part; and sometimes forfeited by their misconduct.

FIRST, as to the *loss* of wages.

1. In order to stimulate the zeal and attention of this class of persons, who are often engaged in very perilous services, the policy of all maritime states has made the payment of their wages to depend generally on the successful termination of the voyage *(a)*. If in the course of the voyage, a total loss or capture of the ship takes place, the seamen lose their wages. So if the ship become disabled on the voyage. But the wages are not lost by the hypothecation of the ship, nor even by the sale of it, unless the sale be made under the authority of a competent court; and they are preferred to the claim of the holder of an hypothecation bond *(b)*. It has been already observed, that they are not lost, though the ship be wrecked, if the seamen assist in saving from the wreck sufficient to pay them *(c)*. Indeed if the ship be not seaworthy at the outset, and the voyage be discontinued on that account, a seaman is not entitled to *wages*, though perhaps he may maintain a special action against the owner for the recovery of damages *(d)*.

It

(*a*) *Molloy*, book 2. ch. 3. sect. 10. 1 Sid. 179. *Abernethy* v. *Landale*, Doug. 539. *French Ordinance*, liv. 3. tit. 4. *Des Loyers des Matelots*, art. 8. *Code de Com.* art. 258.

(*b*) SYDNEY COVE, *Fudge*, 2 Dodson, A. R. 11. MADONNA D'IDRA, *Papaghira*, 1 Dodson, 37.

(*c*) *Ante*, p. 452.

(*d*) By Lord *Ellenborough*, Ch. J. in *Eaken* v. *Thom*, 5 Espin. N. P. Cases, 6.

It was mentioned in a preceding chapter, that the payment of wages is divisible, and that if a ship has delivered its cargo at one place, the wages are so far due, although the ship be afterwards taken or sunk. But if a ship sail to one place in order to take in a cargo there, to be conveyed to another place, and having received the cargo accordingly, be taken before its arrival at the place of delivery, nothing is payable to the seamen for navigating the ship to the first place *(e.)*

2. I have mentioned in a former part of this Treatise *(f)*, that in some foreign countries, where ransom is not contrary to law, the seamen belonging to a ship captured and ransomed, are bound to contribute a portion of their wages toward the ransom by way of general average. This point is in itself of no importance in this country, because ransom is prohibited by our law; but the payment of salvage upon recapture is analogous to the payment of ransom, and was so considered by Sir *William Scott* in a case in the Court of Admiralty *(g)*. In an action brought for the wages of a seaman after a capture and ransom of the ship, and which was tried before Chief Justice *Holt*, the Chief Justice is reported to have decided that the seaman was entitled to nothing, he being unable to *prove* that by the custom of merchants he was entitled *pro ratâ*, as was insisted on his behalf *(h)*. But it seems to be the better opinion, that in the case of capture and recapture, if the ship perform her voyage and earn her freight, a mariner who has not been separated from her, is entitled to his wages upon the footing of the original

(e) Hernaman v. *Bawden*, 3 Burr. 1844, on a voyage to *Newfoundland*, for fish to be carried to *Spain*.

(f) Ante, part 3. ch. 8. s. 14.

(g) The FRIENDS, *Bell*, 4 Rob. A. R. 143. The prize acts do not mention the *freight*; they only direct a portion of the value *of the ships, vessels, boats, and goods restored*, to be paid as salvage. But as the goods, if taken to the place of destination, are valued *there*, the freight is of course included in the valuation, and so the freighter may pay salvage upon it; in one case, an *eighth* of the freight was ordered to be deducted as between the owner and freighter. The RACE HORSE, *White*, 3 Rob. A. R. 101.

(h) Chandler v. *Meade*, mentioned at the end of the case of *Wiggins* v. *Ingleton*, 2 Ld. Raym. 1211.

original contract *(i)*, subject perhaps to a proportionate salvage. In conformity to this opinion, at the trial of a cause before Lord *Eldon*, when his Lordship presided in the Court of Common Pleas, a seaman recovered his whole wages after capture and recapture of the ship *(k)*. The owners did not insist upon any deduction as contribution to the salvage, but put their defence on another ground, which they failed to establish. In another case, a mariner, who had been hired for a voyage from *Newcastle* to *London* and back, at a certain sum, and was captured on board two days after the ship's departure, and taken out and sent to *France*, instituted a suit in the Court of Admiralty for wages; the ship had been retaken, carried to the place of destination, and performed her voyage; the owner however had been obliged to hire another person at *London* to return to *Newcastle* with the ship, in the place of the claimant. Under these circumstances the learned Judge of that Court held, that the claimant was not entitled to any thing; but it seems from the language of the report, that if he had remained on board, his interest would have been thought to have revived upon the recapture *(l)*.

In a case before Lord *Kenyon*, the master of a vessel, which had been seized and restored, claimed his wages for the period of detention, although during that time he had been separated from her; she having afterwards earned her freight. The wages for the voyage exclusive of that period, were paid without dispute; and the defendant is reported to have acquiesced under a verdict given against him for the further sum, by reason of a strong opinion expressed by his Lordship at the trial in favour of the claim *(m)*.

The

(i) *Molloy*, book 2. ch. 4. sect. 14. as to *freight*, which depends upon the same principle. But see the dictum of *Eyre*, C.J. in *Curling* v. *Long*, 1 Bos. & Pull. 637. which is contrary.

(k) *Bergstrom* v *Mills*, 3 Esp. N. P. Cases, 36.

(l) The FRIENDS, *Bell*, 4 Rob. A. R. 143. In this case the learned Judge seems to consider a claim for wages, after capture and recapture, to be subject to salvage.

(m) *Pratt* v. *Cuff*, cited in *Thompson* v. *Rowcroft*, 4 East, 43.

The ground of decision in this case, was fully discussed and considered, on the occasion of the seizure and detention of several *British* ships in *Russia*, by the Emperor *Paul*, in the year 1800. I allude to the case of *Beale* v. *Thompson*, which has been incidentally mentioned before. *Beale*, an *Englishman*, was hired to serve as a seaman in a *British* ship, called the *Aquilon*, whereof *Thompson* was owner, at *monthly* wages, for a voyage from *Hull* to *Petersburgh*, and from thence to *London*; and signed articles in the usual form. The ship went out to *Petersburgh* in ballast to bring a cargo to *London*; and the freight was to be paid *by the ton*. On the *fifth* of *November* 1800, which was soon after this vessel arrived at *Petersburgh*, the Emperor commanded an embargo to be laid on all *English* ships in the ports of his empire, until a supposed convention relating to the island of *Malta* should be fulfilled. To enforce this order, guards were stationed along the shore to prevent the crews from quitting their ships. On the *tenth* of the same month, they were taken from their ships by a *Russian* guard; such of the seamen as were subjects of other countries were liberated at the request of their Consuls; but the *British* masters and mariners were marched in parties into the interior of the country, and treated as prisoners of war. A convention hostile to *Great Britain* was formed between *Russia*, *Sweden*, and *Denmark*, and an embargo was imposed in this country on the vessels of those nations. Upon the death of *Paul*, and the succession of the Emperor *Alexander*, peace was re-established, and the ships that had been detained on both sides were mutually restored. This restitution took place in *Russia* at the end of *May* 1801. *Beale* and the rest of the crew re-embarked on board the *Aquilon*, without entering into any new articles with the master, and returned to *London* with the ship, which brought her cargo and earned her freight. *Thompson*, the owner, paid the wages at the rate mentioned in the articles, exclusive of the time of the ship's detention; and *Beale* brought his action to recover his wages for that time.

time. In support of the claim, it was contended that this conduct of the *Russian* government partook more of the nature of an embargo than of a capture, and that considering it as an embargo, the original contract for wages subsisted, as had been decided in the case of a contract of affreightment *(n)*. And that the mariner's absence from the ship under these circumstances, did not occasion a forfeiture by the operation of those clauses of the articles, which provide for the continuance of the seamen on board their ship, because it was involuntary on his part. On the other hand, it was insisted, that this was a case of hostile seizure and temporary capture, which put an end to the original contract, and left the mariner a right proportionate only to the services he had actually performed. And further, that if it were to be considered only as an embargo, yet as the seaman had not during the period of it done any duty on board the ship, or for the benefit of the owners, he was not entitled to any payment; and it was urged, that if the force of the *Russian* goverument furnished an excuse to the mariner on the one hand, for not performing his contract by continuing on board the ship, so on the other hand it ought to exempt the owner from paying for what he had not received. The learned Judges of the Court of Common Pleas were divided in opinion as to the character to be attributed to these acts of the *Russian* government, upon which the determination of the question between the parties was thought principally to depend *(o)*. The cause was brought before the Court of King's Bench by Writ of Error, and after consideration, the judgment of the Court was delivered by Lord *Ellenborough*, in favour of the claim of *Beale* the mariner. It is impossible to give the full effect of the very learned judgment pronounced by the Chief Justice in an abstract, nor does the plan of this Treatise allow me to transcribe the whole, I must therefore refer the reader, who is

(n) See before, part 3. ch. 11. sect 4.

(o) *Beale* v. *Thompson*, 3 Bos. & Pull. 405.

is desirous of full information, to the report *(p)*, and content myself with stating, that the Court thought it unnecessary to decide in this case, whether or no the dissolution of contracts for freight and wages, is the necessary effect of perfect and complete capture, where the right of the original proprietor is not revested by subsequent recapture, nor recognized as continuing in force by any judgment or authoritative act of restitution on the part of the capturing nation; considering this as a case of hostile seizure, with a view to measures of retaliation, if they should ultimately be thought just and necessary, but of subsequent restitution and abandonment of the right of seizure, on the part of the power by which the seizure had been made; and observing that there was no case where property so dealt with had been considered as captured, or the contract for freight or wages dissolved: and holding therefore that the plaintiff's claim was not defeated on the supposed ground of a dissolution of the contract. The Court also thought, that the seaman had not in this case forfeited his wages under any of the clauses of the articles, because the language of the articles construed, as it ought to be, with reference to the acts of Parliament, imported a departure from the ship by the unauthorized act of the party, and did not apply to a seaman taken out of his ship in the manner in which the plaintiff and the rest of the crew had been in this case; but that if this point were more questionable than it appeared to be, yet that the return of the plaintiff to the ship in the manner stated, did, in the absence of any fresh contract on the subject, import a recognition on the part of the master, that he and the sailors then stood in their original relative situation to each other, under the arricles, by which that relation was constituted. And upon the whole the Court thought "in point of law, that the contract of service, between the "plaintiff and defendant, was to be considered as having "continued and been in force from the time of executing "the

(p) Beale v. Thompson, 4 East, 546.

" the articles, up to and at the period of the ship's arrival " at her port of discharge, and the final termination of " her voyage there; and that the plaintiff was to be con- " sidered as entitled to his wages during the same time."

This case was afterwards brought by Writ of Error before the House of Lords, when the opinion of the Judges was taken on the question, whether, on the whole of the facts found in the special verdict, the original plaintiff was entitled to recover wages during the time he was kept out of the ship, as found in the special verdict. The Judges were unanimously of opinion that he was so entitled to recover; and the Lord Chancellor concurred in their opinion *(q)*.

It has been observed, that *Beale* the plaintiff in the case just quoted, was *an Englishman*; an action was also brought by a mariner, belonging to another ship, under circumstances the same in all respects except as to his national character, he being *a foreigner*. In this action also the decision of the Court was the same *(r)*.

SECONDLY, as to the *forfeiture* of wages.

3. Desertion from the ship is held to be a forfeiture of the wages previously earned in all maritime states *(s)*. And in conformity to this principle of maritime law, the legislature of this country, in the reign of King *William the Third*, " for the prevention of seamen deserting of mer- " chants ships abroad in parts beyond the seas," enacted, " That all *such* seamen, officers, or sailors, who shall desert " the ships or vessels, wherein they are hired to serve for " that voyage, shall for such offence forfeit all such wages " as shall be then due to him or them" *(t)*. By the subsequent statute, which I have so often quoted, if a seaman shall

(q) *Thomson*, plaintiff in error, *Beale*, defendant in error, 1st Dow. 299.

(r) *Johnson* v. *Broderick*, 4 East, 566.

(s) See on this subject of desertion, Ordin. of *Wisbuy*, art. 61. of the *Hanse-Towns*, art. 43. *Molloy*, book 2. chap. 3. sect. 10. *French* Ordinance, liv. 2. tit. 7. *Des Matelots*. art. 3.

(t) 11 & 12 *Will.* 3. *c.* 7. *s.* 17.

shall desert, or refuse to proceed on the voyage on board any ship bound to parts beyond the seas, or shall desert from the ship, to which he belongs, *in parts beyond the seas*, after he shall have signed the contract, he shall forfeit to the owners the wages due to him, at the time of his deserting or refusing to proceed on the voyage *(u)*. If a a mariner quit the ship with leave of the master, and when ordered to return, refuse to do so, his wages are forfeited *(x)*. But they are not forfeited by his quitting the ship, and refusing to proceed in her on a voyage not designated by the articles *(y)*. And if in the Court of Admiralty the owners allege desertion as a defence to a suit for wages, it is incumbent on them to shew the articles or contract, in order that the stipulated service may appear *(z)*.

In the case of certain mariners hired in *the Downs*, for a voyage or run to the port of *Hull* at *twelve* guineas each, who with the consent of the master, but against the positive orders of the owners, quitted the ship on the day after her arrival in the roadstead of that port, in the river *Humber*, the port being so full, that the vessel could not enter immediately; the present learned Judge of the Court of Admiralty, decreed that the mariners had forfeited their wages. The ship actually entered the port within a week: it did not appear that at the time of the desertion, there was any prospect of a *lasting* impediment: and the learned Judge, without determining how long mariners were bound to wait in such a case, held, that they could not be entitled to their dismissal, "till after some time of just expectation "of the removal of the difficulty" *(a)*.

Certain articles of agreement for service in a *privateer* contained in the body a clause imposing the penalty of forfeiture of wages for twenty-four hours absence without leave;

(u) 2 *Geo.* 2. *c.* 36. *s.* 3.

(x) BULMER, *Brown*, 1 Haggard, A. R. 163.

(y) ELIZA, *Ireland*, id. p. 182. COUNTESS OF HARCOURT, *Bunn*, id. p. 248.

(z) BULMER, *Brown*, id. p. 168.

(a) The PEARL, *Denton*, 5 Rob. A. R. 224.

leave; and in addition thereto contained also the following memorandum written in the margin: viz. "to leave at the "end of three months, if the ship is in port or in perfect "safety, of which the captain is to be the sole judge." The ship belonged to the port of *London*. The captain's cook, who had signed these articles, brought an action against the master for his wages; and at the trial it appeared that the plaintiff had served ten months, and on his return from a cruise, while the ship was in *Yarmouth* roads, and the master was on shore, he asked leave of the mate to go on shore to see his wife, but was told by the mate that he could not say whether he might have leave or not; the plaintiff, however, went on shore, and did not afterwards join the ship: *Yarmouth* roads are rather a dangerous place; the crew had originally consisted of 20 mariners; 12 were sufficient to navigate the ship to *London*; and the boatswain, quarter-master, and two lieutenants, had been previously discharged. The learned Judge (Mr. Justice *Chambre*) before whom the cause was tried, told the jury that under such a clause he did not think the master could refuse leave without a sufficient reason, and left it to them to consider whether the ship was in a place of safety when the plaintiff quitted. The jury found a verdict for the plaintiff, and the Court of Common Pleas afterwards approved of the direction of the learned Judge, and the verdict was established *(b)*. This being the case of a private ship of war, and not of a merchant vessel, the forfeiture depended upon the particular contract of the parties, and not upon any legislative enactment.

By the articles of agreement usually signed in these cases, it is stipulated that the mariner shall not go out of the ship on board any other vessel, or be on shore under any pretence whatever, without leave, and that in default he shall be liable to the penalties of the statutes 2 *Geo.* 2. *c.* 36. and 37 *Geo.* 3. *c.* 73 *(c)*. This stipulation is merely referrable

(b) *Neave* v. *Pratt*, 2 B. & P. New. Rep. 408.

(c) Appendix, No. V.

rable to the statute, and does not, as matter of contract, create a forfeiture of wages in a case where the statute has not inflicted it; as in the case of leaving the ship after her arrival at her port of discharge in this country, although before she is moored (*d*). This case is specifically provided for by another section of the first of the above-mentioned statutes, which, reciting that "seamen and mariners after "their ship's arrival at their unlivering *port* in *Great Bri-* "*tain* ofttimes leave the ships and vessels, before they are "unladen, or before the said seamen and mariners are "discharged by the masters or commanders of such ships "or vessels," enacts, "that in case any seaman or mariner, "not entering into the service of his Majesty, his heirs "and successors, shall leave such ship or vessel to which "he or they belong, before he or they shall have a dis- "charge in writing from the master or commander, or "other person having the charge of such ship or vessel, "he or they so leaving such ship or vessel shall forfeit "*one month's* pay" to the use of *Greenwich Hospital* (*e*). Although by this clause the discharge is required to be in writing, yet in an action brought by a seaman against the master for his wages, at the trial whereof it appeared that the plaintiff and several others left the ship under these circumstances, while she was under the command of the mate, and the master insisted upon his right to make this deduction, but did not call the mate to prove that he had not given a discharge in writing; it was held that the jury might presume that the plaintiff had received such a discharge; this being the case of a penalty, in which the negative ought to be proved by the party insisting on the forfeiture, as the circumstances of the case appeared to afford him the means of doing so (*f*). It is to be observed that in this case the defence at the trial was grounded on the particular enactment of the statute.

The

(*d*) *Frontine* v. *Frost*, 3 Bos. & Pull. 302.
(*e*) 2 *Geo.* 2. *c.* 36. *s.* 6.
(*f*) *Frontine* v. *Frost*, 3 Bos. & Pull. 302.

The same statute authorizes the master or owner to deduct from the wages due to a mariner all the penalties and forfeitures incurred by the act, and to enter them in a book to be kept for that purpose, to be signed by the master and two or more principal officers *(g)*: and it has been held that the master cannot make this deduction unless the forfeiture has been regularly entered into a book as the statute directs *(h)*.

With respect to ships of the burthen of one hundred tons and upwards, employed in the *coasting trade* and going to open sea; if a seaman, having signed the requisite agreement, neglects or refuses to proceed on the intended voyage, he forfeits to the owners *all* the wages due to him at the time; but the forfeiture for desertion afterwards, and before the voyage or voyages agreed upon, or upon which such ship shall have proceeded, shall be completed, and the cargo of such ship delivered, or before the seamen shall have a discharge in writing from the master, &c. is only of *one month*'s wages to the use of *Greenwich Hospital (i)*.

In *all* cases a seaman, who *wilfully* absents himself from the ship without leave, forfeits to the use of *Greenwich Hospital two days* pay for each days absence *(k)*. Absence occasioned by the power of a foreign country, in which the ship may happen to be, without any fault on the part of the seaman, does not work any forfeiture *(l)*.

In the coasting trade, the statute directs, that if a seaman is hired by the voyage, and the period of the voyage agreed upon exceeds one *lunar* month, the forfeiture of one month's pay shall be accounted a forfeiture of a sum of money bearing the same proportion to the whole wages, as a lunar month shall bear to the whole period of the voyage; and that the forfeiture of two days pay shall be computed in

(g) 2 *Geo.* 2. *c.* 36. *s.* 9.
(h) *Frontine* v. *Frost*, 3 Bos. & Pull. 302. See post. p. 471.
(i) 31 *Geo.* 3. *c.* 39. *s.* 3 & 4.
(k) 2 *Geo.* 2. *c.* 36. *s.* 5.; and 31 *Geo.* 3. *c.* 39. *s.* 4.
(l) *Beale* v. *Thompson*, 4 East, 546.

in the same manner. If the whole period of the voyage does not exceed one lunar month, the forfeiture of one month's pay is to be accounted a forfeiture of the whole wages contracted for: and the like as to the forfeiture of two days pay, if the voyage does not exceed two days *(m)*.

In addition to this forfeiture of wages earned by service in the ship, from which a seaman deserts, the legislature has further punished desertion from a *British* ship in the *West Indies*, with forfeiture of *all* the wages, to which he might otherwise be entitled for the voyage made in the ship, *on board of which he shall enter* immediately after such desertion *(n)*.

I have already mentioned that entry into the service of his Majesty is *not* deemed a desertion, nor followed by the forfeiture of wages *(o)*:

A forfeiture in this, as in other cases, may be waived by the party entitled to take advantage of it. And accordingly in the case of a foreign seaman, by whose articles it was provided, " that if any of the crew should absent " themselves before the ship was unloaded without the " master's leave, they should forfeit the whole of their " wages," and who quitted the ship without leave in the port of *London*, before she was unloaded, and was absent a day and a night, but who afterwards returned to the ship, and was received by the master, and worked in discharging the cargo in the same way as the other mariners, it was held that the master could not set up this absence as a defence to an action brought by the seaman for his wages *(p)*.

3. *b.* It is however of great importance to understand, that the forfeiture of wages for desertion does not arise out of these provisions of the Legislature, but depends, as I have already intimated, upon a general rule and maxim of the Maritime Law. This point has been most ably discussed

(m) 31 *Geo.* 3. *c.* 39. *s.* 9.

(n) 37 *Geo.* 3. *c.* 73. *s.* 1.

(o) Chap. 2. of this part, sect. 2. by the statute there cited.

(p) *Muller* v. *Brant*, 2 Camp. 590.

cussed and enforced in a judgment pronounced by the learned Judge of the Court of Admiralty, which requires to be quoted at length as a most excellent illustration of general principles. A *West India* ship having returned with a cargo to the river *Thames* was lashed to another vessel in the port of *London*, a little below *Blackwall*, preparatory to her entrance into the *West India Dock*, for the discharge of her cargo, being the only place at which it could lawfully be discharged. In this situation the carpenter quitted the ship without the permission of the mate, who was left on board in the command, and probably with a knowledge that permission had been actually refused. It appears that several others of the crew left the ship in the same situation: and the owners were obliged to procure other assistance to work the vessel into the dock. The carpenter instituted a suit for his wages, and it was contended on his behalf, that if any penalty at all was incurred, it was only a forfeiture of one month's pay to *Greenwich Hospital* under the statute 2 *Geo.* 2. *c.* 36. *s.* 6. On the other hand, the owners insisted that the entire right to wages was forfeited and gone by this desertion: and the learned Judge so decreed, and made the following remarks upon the law in such cases. "The question then is as to the *penalty*: if the word "penalty is that which properly belongs to this act of mis-"conduct. That such a demand as this, for entire wages "under such conduct on the part of those who claim them, "could have been at any time supported, is inconceivable: "if owners are damnified by the misconduct of their ma-"riners, they are entitled upon every principle of reason "and justice to a set off against the demand of wages, on "account of the hazards to which their property had been "exposed by the non-performance of the contract. By "interpretation of law, the voyage is not completed by the "mere fact of arrival; the act of mooring is an act to be "done by the crew, and their duty extends to the time of "the unlivery of the cargo. There is no period at which "the cargo is more exposed to hazard, than when it is in

" the act of being transferred from the ship to the shore,
" and therefore the law, not only the old law, but particu-
" larly the statute by which the *West India* trade has been
" in latter times regulated, has enjoined in the strictest
" manner that the mariners shall stay by the vessel until
" the cargo be actually delivered. I take this to have been
" always a part of the duty of mariners, their contract is
" legally understood to go this length, and there never can
" have been a time when the owner was not entitled to
" some consideration against the mariners, on account of
" the non-completion of the contract. This is a considera-
" tion not in *modum pœnæ*, but it is a civil compensation
" for injury received, existing in all reason and justice ante-
" cedently to any statute upon the subject. In the case of
" freight, if a master does not execute any part of the con-
" tract, it is in strict principle a forfeiture of the whole
" freight, and so it would be in these cases of wages, though
" the law has not usually been carried to its full extent;
" but from that indulgence with which it has always con-
" templated the interests, and even the errors and failures
" of this class of men, it has wrought only the forfeiture of
" a part of the wages by way of compensation to the owner
" for the trouble and risk of the exposure of his property,
" and for his additional expence in procuring other assist-
" ance to effect that which ought to have been effected by
" such deserters. Then came the statute of merchant sea-
" men, which contained a clause, giving one month's wages
" to *Greenwich Hospital* in cases of desertion, and in the
" argument which has been founded, I presume upon the
" case alluded to, it is urged as if it was understood to
" transfer part of the forfeited wages to that Institution.
" But surely it never could be the intention of the Legisla-
" ture to make that a matter of charity to *Greenwich Hos-*
" *pital* which was already a matter of justice due to the
" injured owner. It would be a strange remedy to hold
" out to the merchant owner, who was defrauded of the
" service of his mariners by their desertion, and who had
" his

" his equitable right of deducting from their wages on that
" account, to inform him that now he should no longer
" have his right of set off against these delinquents, but
" that the wages should go as a forfeiture to *Greenwich*
" *Hospital*. That would be to double his injury. The case
" of *Frontine & Frost* produced a great deal of deliberation
" among the Judges of the Court in which it was consi-
" dered; and it was there laid down pretty strongly in the
" argument of counsel, that the delinquent does not forfeit
" the whole of his wages, which is true. But it was fur-
" ther argued that the master must have debited himself
" to *Greenwich Hospital* in order to entitle himself to make
" the deduction, on the ground that the deduction is for the
" benefit of that charity, and not for the compensation of
" the owner. Now I take the interpretation of the case to
" be this; that it will not entitle the owner to set off the
" forfeiture to *Greenwich Hospital* as a forfeiture under the
" statute, which he had done in his pleadings, unless he
" shall have complied with the requisitions of the statute,
" not that he shall lose his own right of deducting a com-
" pensation due to himself personally on account of the
" imperfect execution of the contract. I have had oppor-
" tunities of conversing with very learned persons, who
" were interested in that judgment, and from whom I un-
" derstand that the authority of their opinions concurs in
" sustaining the proposition, that the owner is not debarred
" by the provisions of the statute from those rights, to
" which he was entitled under the old law. The Legisla-
" ture never could have intended to deprive the owner of
" his remedy, when it superadded this forfeiture in favour
" of the hospital, which was to be obtained in the modes
" it has prescribed. This case does not, I think, in any
" manner interfere with the principle which I have laid
" down, that the owner is at liberty to set off the compen-
" sation to which he is entitled against a demand for wages
" independently of that statute. But the present case goes

" a great deal further; it is true the vessel had arrived in " the river, but the voyage was not finished, it was still to " be prosecuted. The acts which have passed, having " made the *West India Docks* the only place where these " cargoes can be discharged, the voyage can only terminate " there; the vessel has not, till then, arrived at her final " moorings. Her port is not the port of *London* generally, " but that particular portion of it which is expressly and " exclusively appropriated for the reception of *West India* " ships. It is therefore a desertion during the voyage, " which by the old law, as well as by the statute, works a " forfeiture of the whole wages: and it is a case of a very " flagrant nature " *(q)*.

4. The Legislature has also punished, with the forfeiture of wages, the offence of neglecting or refusing to assist the master in defending the ship against the attack of pirates *(r)*. It seems also that neglect of duty, disobedience of orders, habitual drunkenness, or any cause which will justify a master in discharging a seaman during the voyage, will also deprive the seaman of his wages *(s)*.

5. If the cargo be embezzled or injured by the fraud or negligence of the seamen, so that the merchant has a right to claim a satisfaction from the master and owners, they may by the custom of merchants deduct the value thereof from the wages of the seamen, by whose misconduct the injury has taken place *(t)*. And the last proviso introduced into the usual agreement *(u)* signed by the seamen, is calculated to enforce this rule in the case of embezzlement either of the cargo, or of the ship's stores. This proviso however is to be construed individually, as affecting only the particular persons guilty of the embezzlement, and not

(q) The BALTIC MERCHANT, *Smith*, 1 Edw. Ad. Rep. 86.

(r) 22 & 23 *Car.* 2. *c.* 11. *s.* 7.

(s) *See* the judgment pronounced by Sir *William Scott*, in the case of *Robinet* v. *The Ship* EXETER, 2 Rob. A. R. 261.

(t) *Molloy*, book 2. ch. 3. sect. 9. 2 Show. 167. 1 Ld. Raym. 650.

(u) *See* Appendix, N° V.

not the whole crew *(x)*. Nor, as it seems, is any innocent person liable to contribute a portion of his wages to make good the loss occasioned by the misconduct of others *(y)*.

x *Thompson* v. *Collins*, 1 Bos. & Pull. N. R. 347.

y The same case.

CHAPTER THE FOURTH.

OF PROCEEDINGS TO OBTAIN THE PAYMENT OF WAGES.

HAVING, in the three preceding chapters, considered the contract for service on board a merchant ship; the cases, in which the remuneration of such service is due either wholly or in part; and those, in which it is lost, or forfeited; I propose in this last chapter to treat of the means of obtaining this remuneration by legal process.

1. According to the observation made in a former part of this Treatise *(a)*, the jurisdiction of the Courts of Common Law can in this case be exercised only by suit against the person; but the jurisdiction of the Court of Admiralty may be exercised by process against the ship, or the proceeds of a sale thereof remaining in the Court. In this Court alone therefore that principal of the maritime law, which holds the ship in specie to be subject to the claim of wages earned by service in it can be carried into effect. The Court of Admiralty was originally constituted for the adjudication of causes and disputes arising upon the high sea, and within the jurisdiction of the Lord High Admiral, whose deputy the Judge of that Court formerly was. The proceedings therein, being according to the course of the Civil Law, appear to have been very unpopular in ancient times; and two statutes were made in the reign of King *Richard the Second*, upon the complaint of the Commons of *England*, to define the limits of its jurisdiction; by the first of which it is "accorded and assented, that the Admirals and their deputies shall not meddle from hence-forth of any thing done within the realm, but only of a thing done upon the sea, as it hath been used in the time

(a) Part 2. ch. 3. sect. 25.

" time of the noble prince King *Edward*, grandfather of " our Lord the King that now is" *(b)*: by the other, " It " is *declared*, ordained and established, that of all manner " of contracts, pleas, and quarrels, and all other things " arising within the bodies of counties, as well by land as " by water, and also of wreck of the sea, the Admiral's " Court shall have no manner of cognizance, power nor " jurisdiction" *(c)*. Considering these statutes with reference to the present subject, it is evident that, if the seaman's claim to wages be in reality founded on the performance of his service in the navigation of a ship on the high sea, the Court of Admiralty must have cognizance of the claim; and on the other hand that, if the claim be in reality founded on the contract made for performance of such service, and such contract be, as it usually is, made on shore, or in a port or river, within the body of a county, the Court of Admiralty can have no cognizance of it. In this view of the subject, it is difficult to distinguish the case of the master from that of the persons employed under his command; the nature and place of the service, and the place of the hiring, are in both cases usually the same. Nevertheless a distinction has long been made between them, and is now become a settled rule of law. In pursuance of this distinction the seamen have now in ordinary cases a threefold remedy; against the ship, the owners, and the master: the master, whether appointed to that office at the commencement *(d)*, or succeeding to it in the course *(e)* of the voyage, can only sue the owners personally in a Court of Common Law. But as he generally receives the freight and earnings of the ship, and may pay himself out of the money in his hands, he has not often occasion for the aid of a Court of Justice to obtain his

(b) 13 *Rich.* 2 *stat.* 1. *c.* 5.
(c) 15 *Rich.* 2. *c.* 3.
(d) *Rogg* v. *King*, 2 Stra. 858. 1 Bernard, 297. and *King* v. *Player*, there cited. *Clay* v. *Sudgrave*, or *Snellgrave*, Salk. 33. 1 Ld. Raym. 576. 12 Mod. 405. Carth. 518.
(e) *Read* v. *Chapman*, 2 Stra. 937. The FAVORITE, *De Jersey*, 2 Rob. A.R. 232.

his right. The suit of the seamen in the Court of Admiralty is frequently spoken of as an excepted case *(f)*, and an indulgence granted to them on account of the convenience and advantage of proceeding in a Court, in which all may join in one suit, and payment may be obtained out of the value of the ship; and of the presumption that they, who contract with the master, contract with him on the credit of the ship: whereas the master, who contracts with the owners, is presumed to trust to their personal credit.

2. The clear result of the several decisions *(g)* upon this subject is, that if the hiring be on the usual terms, and made by word, or by writing only and not by deed, the seamen, or any one or more of them, and every officer except the master, may sue in the Court of Admiralty; and may by the process of that Court arrest the ship as a security for their demand, or cite the master or owners personally to answer to them. In a suit against the owners, the master is a competent witness on their behalf *(h)*.

And the seamen may sue there not only for the wages earned in the course of a voyage, but for those earned in rigging and fitting out a ship for a voyage, on which they have engaged to proceed, if the owners do not afterwards think proper to send the ship on the intended voyage *(i)*. And it seems also that they may sue there for the wages contracted to be paid to them for navigating a ship from one port of this country to another *(k)*. And if a suit be there instituted, that Court can properly decide whether a place

(f) In the cases cited in the two last notes.

(g) As to the SEAMEN, *after* sentence, Winch. 8. *Before* sentence, *Alleson* v. *Mursh*, 2 Vent. 181. *Anon.* 3 Mod. 379. *Bens* v. *Parre*, 2 Ld. Raym. 1206. The BOATSWAIN, *King* v. *Ragg*, 2 Stra. 858. 1 Barnard, 297. The CARPENTER, *Wheeler* v. *Thomson*, 1. Stra. 707. The SURGEON, Sayer, 136. The MATE, *Bayley* v. *Grant*, 1 Ld. Raym. 632. Salk. 33. *Read* v. *Chapman*, 2 Stra. 937.

(h) The LADY ANN, *Wardell*, 1 Edw. 235.

(i) *Wells* v. *Osman*, 2 Ld. Raym. 1044. 6 Mod. 238. *See* also *Mills & another* v. *Gregory*, Sayer, 127.

(k) *Anon.* 1 Vent. 343. The application for a prohibition was *after* sentence. *See* 31 *Geo.* 3. *c.* 39. *s.* 6.

place at which a ship may have arrived be a port of delivery so as to entitle them to wages *(l)*. Indeed if the master has obtained a sentence in the court of Admiralty upon the usual allegation, stating that he was hired within the jurisdiction of that Court, the Courts at *Westminster* Hall will not prohibit the execution of the sentence *(m)*.

2. *b.* In regard to *foreign* seamen, the Court of Admiralty has been in the habit of entertaining proceedings against ships in the ports of this country, at *their* suit for wages as due by the general maritime law, with the consent of the accredited agent of the government of their country. But the learned Judge of that Court refused to proceed in the suit of an *American* seaman, whose claim was founded, not on any such rule of law, or any custom of his country, but merely on a particular article in an alleged Act of Congress, which was not incorporated into the ship's articles *(n)*. In the case of a *Greek* vessel which had been sold in his country, under a decree of the Court, in a suit instituted by the holder of a bottomry bond, the same Judge ordered the charge of the subsistence of the *Greek* seamen to be paid out of the proceeds. It was proved that by the customary regulations of *Turkey*, the master is to take back the men in his own vessel, or provide conveyance for them in another; and if the vessel be sold, the proceeds are liable to their support, and to procure them the means of conveyance to their own country. The seamen had in fact been subsisted and sent home by the *British* government, and the King's proctor intervened in the suit. The learned Judge adverted to this proof, but also said that he considered subsistence to be a part of the compensation for the services of a mariner, and so in effect a part of his wages. It does not appear by the report, whether any expence had been incurred in sending back the men beyond

(l) Brown v. *Benn & others*, 2 Ld. Raym. 1247.

(m) Barber & another v. *Wharton*, 2 Ld. Raym. 1452.

(n) The COURTNEY, *English*, 1 Edw. 239.

yond that of their subsistence, or whether any other expence was decreed or claimed *(o)*. And in the case of a *Dutch* ship which put into the *Isle of Wight* in great distress, and was there abandoned by the owners to the discretion of the master, and assigned to *British* creditors, the same learned Judge considered the owners as having disclaimed the articles of agreement with the mariners, which contained a clause against suits in a foreign country, and the contract with them to be determined, and that their suit was the arrest of a *British* ship, and their claim sustainable on the general law *(p)*. In the case also of an *American* ship, which had sailed from *New York* under an engagement with the mariners for a voyage to *Gottenburgh* and back, but which in fact sailed to *Petersburgh*, and after delivering her cargo there, took a cargo for *London* under a *British* licence, which was in contravention of the law of *America*, the seamen were allowed to recover their wages: the character of alien enemy was for the purpose of this voyage removed by the *British* licence, as far as respected a proceeding of this nature in a *British* Court; and the learned Judge thought the seamen would be without remedy if the Court refused its assistance *(q)*.

3. I have said that seamen may sue in the Court of Admiralty, if the contract is made on the usual terms, and not by deed. It was decided in two causes, before the passing of the earliest statute requiring the contract to be in writing, that the Court of Admiralty had jurisdiction in the case of a written contract *(r)*. And as well the statute requiring a written agreement in the case of foreign voyages *(s)*, as that which requires such an agreement in the case of certain vessels employed in the coasting trade *(t)*, contains

(o) MADONNA D'IDRA, *Papaghica*, 1 Dodson, A. R. 37.
(p) WILHELM FREDERICK, *Noorman*, 1 Hag. A. R. 138.
(q) MARIA THERESA, *Phillips*, 1 Dod. A. R. 303.
(r) *Bens* v. *Parre*, M. T. 4 Ann. 2 Ld. Raym. 1206, and the *Mariners* Case, 8 Mod. 379.
(s) 2 *Geo.* 2. *c.* 36. *s.* 8.
(t) 31 *Geo.* 3. *c.* 39. *s.* 6.

contains a clause, enacting that no seaman shall, by entering into or signing such agreement, be deprived of any means for the recovery of wages against any ship, the master, or owners, which he might then lawfully make use of. The case of special agreements, and of contracts under seal, requires further explanation. The contract, whatever be its form or nature, always remains in the possession of the master or owners; the statutes expressly ordain that where it becomes necessary to produce the contract in Court, no obligation shall lie on the seamen to produce it, but on the master or owners of the ship, and that no seaman shall fail in any suit or process for the recovery of wages for want of the production of it *(u)*. In the common form of proceeding in the Court of Admiralty, the party who sues for wages does not state how the contract was made; the foundation of the suit in that Court is the service, and not the hiring; and therefore the objection that the hiring was upon special terms, or was made by deed, does not appear upon the face of the complainants proceedings, but must be made by the defendants, if they wish to rely on it. And they must make their objection, and apply to one of the Courts at *Westminster* Hall for a prohibition, *before* sentence is given in the Court of Admiralty: if they suffer the cause to proceed to a judgment upon the merits in that Court, they cannot afterwards avail themselves of this objection *(x)*. If the contract for service be made upon terms and conditions differing from the general rules of law, the service alone cannot entitle a seaman to his wages; his right to them must depend upon the performance of the stipulated

(u) 2 *Geo.* 2. and 31 *Geo.* 3. as last referred to. And a seaman plaintiff need not give notice to the defendant to produce the articles at the trial. If the defendant wishes to take advantage of any clause contained in them, he himself must produce them. *Bowman* v. *Manzelman*, 2 Camp. 315.

(x) Buggin v. *Bennett*, 4 Burr. 2035. If a party, who has pleaded a modus to a suit in the Spiritual Court for tithes, suffer the modus to be tried in that Court, he cannot obtain a prohibition *after* sentence. *Full* v. *Hutchins*, Cowp. 422.

stipulated terms. The construction of the instrument, in which those terms are contained, is a proper subject for the jurisdiction of the Courts of Common Law; and it is clear by the several authorities on this subject, notwithstanding a seeming dictum in one case *(y)* to the contrary, that upon the suggestion of such a contract made at land and under seal, supported by the proper affidavits, the Courts at *Westminster* Hall will prohibit the Court of Admiralty from proceeding in a suit instituted there *(z)*.

4. But it is not quite clear, whether the defendants ought, before they apply for a prohibition, to plead the agreement in the Court of Admiralty as a bar to the jurisdiction of that Court. In one of the cases on this subject, the Court of King's Bench is reported to have said, "If there is any "special contract, as is now suggested, the defendant may "plead it in the Court of Admiralty, and if that Court "does not allow the plea, then it may be a proper time to "move the King's Bench for a prohibition; for if it should "be granted before the plea is disallowed, it is a prejudging "of the justice of that Court" *(a)*.

5. The course of the proceedings that had taken place in the Court of Admiralty, does not appear by the report of any of the cases, in which a prohibition has been granted. The best reporter of the first of these cases *(b)*, says only, "A motion was made for a prohibition to the Court of "Admiralty, in a suit there for mariners wages, upon a "suggestion of a contract made for them at land; and the "Court held, that for the convenience of seamen the "Admiralty had been allowed to hold plea for mariners "wages, but yet with this limitation, that if there be any "special agreement, by which the mariners are to receive "their

(y) Bens v. *Parre*, 2 Ld. Raym. 1206.

(z) See the cases cited in 2 Dodson's, A. R. p. 12, in support of the doctrine, that the Court of Admiralty has no jurisdiction in special contracts.

(a) The *Mariner*'s Case, 8 Mod. 379. Trin. T. 11 *Geo.* 3.

(b) Opy v. *Child & others*, E. T. 5 *Will. & Mary*. K. B. Salk. 31. S. C. by the name of *Opy* v. *Adison & others*, 12 Mod. 38. but not more circumstantial.

" their wages in any other manner than is usual, or if the " agreement be under seal, so as to be more than a parol " agreement, in such a case a prohibition shall be granted: " and so it was granted in this case."

In the second cause *(c)*, by the suggestion *(d)* made in support of the motion for a prohibition, the defendant in the Court of Admiralty, after reciting the statutes relating to the jurisdiction of the Court of Admiralty, and the libel exhibited in that Court by the seamen (by which it appeared that they had during the voyage entered on board one of his Majesty's ships) set forth the contract, which contained an express covenant, that if any or either of the seamen should depart from or leave the ship during the voyage, to go on board any of his Majesty's ship or ships of war, or upon any other pretence or account whatsoever, without leave of the master, such seaman so deserting or leaving the ship should forfeit and lose all his wages and pay then due and owing; and averred that this contract was made on land in this country, and sealed and delivered by the parties, and that although he had offered to prove the said statutes and the rest of the premises in the Court of Admiralty before the Judge there, yet that the Judge of the said Court had altogether refused to receive the said plea and allegation. Upon the motion for a prohibition, the Chief Justice (Lord *Hardwicke*) said, that before the making of the new statute, (*viz.* the 2d *Geo.* 2. *c.* 36.) he always understood the law to be settled, that, as the Admiralty Court proceeds in suits for mariners wages upon contracts made at land, which cannot be the proper cognizance of the maritime jurisdiction, merely by indulgence, a prohibition would always be granted where the contract differed from the common and usual contracts between masters of ships and seamen about wages, by reason of some special terms contained

(c) Day v. *Serle*, K. B. East. T. 7 *Geo.* 2. very shortly mentioned by *Strange*, vol. 2. p. 968. more fully by *Barnardiston*, vol. 2. p. 419: but the account in the text of the judgment pronounced by Lord *Hardwicke* is taken from a manuscript note.

(d) M. S. It is signed by *Draper*.

contained in it; and that in this agreement there seemed to be some special covenants, as, for example, one, that if the mariners should enter into any of his Majesty's ships of war, they should forfeit their wages; which was directly contrary to a clause in the late act. And secondly, that where the agreement was by writing signed and sealed, there also a prohibition should go, which was likewise the present case. And the only question therefore remaining was, whether or no the statute reached to this case. And his Lordship gave his opinion that it did not; since as this was a contract by deed, it was dehors the act, which only required a contract in writing; and it could not be supposed that the act intended to give the Court of Admiralty the cognizance of agreements for mariners wages made by deed; that must depend upon the trial of the validity of such deed, which could not be otherwise than by a jury at Common Law, being left as it was before; that this case came within the case of *Opy & Addison*, and as the late statute did not take it out of the old rule, it must still go by that rule. The other Judges concurred in the same opinion; and a prohibition was granted.

The report of the last case on this subject, which was a suit instituted in the Court of Admiralty by seamen employed on board a ship in the service of the *East India* Company, is given at considerable length, and although the particulars of the deed, under which the seamen were hired, are not stated, it may be collected from the report that the deed contained a clause, by which it was stipulated, that the seamen should not be entitled to wages, unless the ship should return home; but it does not appear whether this event had taken place or no. The Court granted a prohibition upon the authority of the two former cases, and Lord *Mansfield* took notice that the seal was not the only circumstance, in which this case differed from the ordinary contract for mariners wages *(e)*. 6. From

(e) *Howe* v. *Nappier*, 4 Burr. 1944. The records of suggestions for prohibitions are in general very regularly kept at the office of the Clerk

6. From this view of the decisions of the Courts at *Westminster Hall*, it appears that a prohibition has not in any instance been actually granted where a contract was upon the ordinary terms, merely because it was made by deed; but that in each of the cases the Court considered that circumstance alone to be a sufficient ground for a prohibition. For which the reason seems to be, that as the suit of the seamen in the Court of Admiralty was at first allowed only as a matter of indulgence, and considered as an excepted case not properly belonging to the jurisdiction of that Court, the exception was confined to the case of ordinary contracts, not made under seal. For if a contract under seal contain such clauses and covenants only as are conformable to the general rules, which govern the administration of justice in the Court of Admiralty, neither the actual existence, nor the legal effect and import, of the deed can become the subject of litigation in that Court. The seamen are not bound to make the deed the foundation of their claim, either by the general course of proceedings in the Court of Admiralty, or by the statute; and as it can never be their interest to deny the existence or execution of a deed pleaded by the defendant, containing only the usual terms, upon which their claim would rest, if such a deed did not exist, the objection to the mode of trial pursued in that Court, and to the necessity of two witnesses to prove the execution of a deed, can hardly arise. In a case relating to the jurisdiction of the Court of Admiralty on a deed of hypothecation of a ship by the master, which came before the Court of King's Bench a few years ago, one of the learned judges of that Court *(f)* said, "If the Court of "Admiralty, has *jurisdiction over the subject-matter*, the cir- "cumstance of the instrument being under seal does not "deprive them of their jurisdiction" *(g)*.

7. In

Clerk of the Papers, but the particular suggestion in this case could not be found, although a very diligent search was made by the officer.

(f) Mr. Justice *Buller*, 3 Ter. Rep. K. B. 170.

(g) *Menetone* v. *Gibbons*, 3 Ter. Rep. K. B. 207.

7. In a case where the defendants in the Court of Admiralty pleaded a deed, by the terms whereof the mariners agreed to subject themselves to the loss of their wages on particular circumstances, and the plaintiff replied that the deed was obtained by fraud and circumvention, and the Court of Admiralty declared it to have been so, and gave sentence for the plaintiff to recover his wages; the Court of King's Bench, upon application for a prohibition, said, "This is only a deed on one side to forfeit the wages upon "particular circumstances, but will not enable them to "sue for their wages at law; the deed therefore comes in "only by way of incident, and then they may proceed to "try it. There can be no prohibition" *(h)*.

8. In proceeding against the ship in specie, if the value thereof be insufficient to discharge all the claims upon it; the seaman's claim for his wages is preferred before all other charges *(i)*, for the same reason that the last bottomry-bond is preferred to those of an earlier date: the labour of the seamen having brought the ship to the destined port, has furnished to all other persons the means of asserting their claims upon it, which otherwise they could not have had.

9. But all suits and actions brought in the Court of Admiralty for seamen's wages must be commenced within *six* years next after the cause of such suit or action shall accrue, unless the party entitled to sue shall at that time be within the age of twenty-one years, a feme covert, *non compos mentis*, or imprisoned, or unless such party, or the party sued, shall be at that time beyond the seas; in which cases the suit may be brought within *six* years after the party suing shall be of full age, discovert, of sane memory, or at large; or either the party suing, or the party sued, shall return from beyond the sea *(k)*.

10. In

(h) *Buck* v. *Atwood*, 2 Stra. 761.

(i) The FAVORITE, *De Jersey*, 2 Rob. A. R. 232. *French* Ordinance, liv. 1. tit. 14. *de la saisie des vaisseaux*. art. 16. and *Valin* thereon. *Code de Com.* art. 192.

(k) 4 *Ann. c.* 16. *s.* 17, 18, & 19. The length of time thus allowed

10. In the Courts of Common Law the seamen may sue either the master, as the person immediately contracting with them and answerable to them, or the owners, as the persons virtually contracting with them, through the agency of the master, and answerable for the performance of his engagement. And actions in the Courts of Common Law are also limited to the same period of *six* years, with the same provisoes *(l)* unless they are founded on a contract under seal; if they are founded on such a contract, the statutable limitation does not apply to them; but after a lapse of *twenty* years the claims will be presumed to have been satisfied without any proof of payment.

In suits in the Courts of Common Law, the form of action depends upon the nature of the contract: if the contract be under seal, and delivered as a deed, an action of debt or covenant must be brought; if it be not under seal or not so delivered, an action of debt or of assumpsit *(m)*. And in order to enable the plaintiff to frame his declaration correctly, a Judge of the Court will order the defendant to show the articles to the attorney for the plaintiff, and if necessary, to give him a copy of them. The plaintiff is not bound to show that the ship earned freight; the defendant must prove the negative, if such proof will furnish a defence *(n)*.

The course of pleading to be adopted by the defendant depends upon the form of the plaintiff's declaration, according to the general rules and distinctions respecting actions of debt, covenant, and assumpsit, of which the consideration

may be very inconvenient in the case of a suit against the ship, if the property thereof has been changed. The *French* Ordinance allows only *one* year.

(l) 21 *Jas.* 1. *c.* 16. *s.* 3 & 7. and 4 *Anne, c.* 16. *s.* 19.

(m) Clement v. *Gunhouse*, cited before, part 4. c. 1. s. 1. p. 435.

(n) Brown v. *Milner*, 7 Taunton, 319. The earning of freight is not in all cases necessary to entitle seamen to their wages: as suppose a ship goes out in search of a cargo, and not being able to procure one, returns empty, will the seamen be entitled to their wages unless there be an agreement to the contrary? *See* the judgment of Lord *Stowell*, in the case of the NEPTUNE, *Clark*, 1 Haggard, A. R. 227.

sideration does not properly belong to a Treatise on a single branch of the law.

In addition to the methods of recovering wages before mentioned, and in order to give greater facility to the recovery thereof, an act of parliament was passed in the 59th year of the reign of his late Majesty, (which will be found in the Appendix) whereby authority is given to Justices of the Peace, on the complaint of persons who have served on board any vessel trading from any place in *England* to parts beyond the seas, or to any other place in *Great Britain*, and where the sum in question does not exceed 20*l.* to summon the master or owner, &c. and to order payment, and cause the amount to be levied by distress and sale of the goods of the party, or of the vessel or its tackle or furniture *(o)*. The Act gives a power of appeal to the Court of Admiralty under the restrictions therein mentioned *(p)*, and appears to provide that seamen shall not deprive themselves of its benefit by any clause in their contract; and casts the burthen of producing the written contract on the master or owners *(q)* and reserves all pre-existing remedies *(r)*.

It does not extend to Scotland *(s)*. Its continuance was limited to seven years from the 2d July 1819 *(t)*; but it has been continued for seven years more by a subsequent statute *(u)*.

(o) 59 *Geo.* 3. *c.* 58. *s.* 1.
(p) Id. *s.* 2.
(q) Id. *s.* 3.
(r) Id. *s.* 4.
(s) Id. *s.* 5.
(t) Id *s.* 7.
(u) 7 *Geo.* 4. *c.* 59.

APPENDIX.

N° I.

FORM OF A BOTTOMRY BOND.

KNOW ALL MEN by these presents, That I, *A. B.* commander and two-thirds owner of the ship *Exeter*, for myself, and *C. D.* remaining third-owner of the said ship, am held and firmly bound unto *E. F.* in the penal sum of *two thousand pounds* sterling, for the payment of which well and truly to be made unto the said *E. F.* his heirs, executors, administrators, or assigns, I hereby bind myself, my heirs, executors and administrators, firmly by these presents. *In witness* whereof I have hereunto set my hand and seal, this 14th day of *December*, in the year of our Lord 1796.

WHEREAS the above bound *A. B.* hath taken up and received of the said *E. F.* the full and just sum of *one thousand pounds* sterling, which sum is to run at respondentia on the block and freight of the ship *Exeter*, whereof the said *A. B.* is now master, from the port or road of *Bombay* on a voyage to the port of *London*, having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of *twenty-five per cent* (25 per cent) for the voyage. In consideration whereof usual risks of the seas, rivers, enemies, fires, pirates, &c. are to be on account of the said *E. F.* And for the further security of the said *E. F.* the said *A. B.* doth by these presents mortgage and assign over to the said *E. F.* his heirs, executors, administrators, and assigns, the said ship *Exeter*, and her freight, together with all her tackle, apparel, &c. And it is hereby declared, that the said ship *Exeter* and her freight, is thus assigned over for the security of the respondentia taken up by the said *A. B.* and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

NOW THE CONDITION of this obligation is such, that if the above bound *A. B.* his heirs, executors, or administrators,

shall and do well and truly pay, or cause to be paid unto the said *E. F.* or his attornies in *London*, legally authorized to receive the same, their executors, administrators, or assigns, the full and just sum of 1,000*l.* sterling, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of *ninety* days after the safe arrival of the said ship *Exeter*, at her moorings in the river *Thames*, or in case of the loss of the said ship *Exeter*, such an average as by custom shall have become due on the salvage, then this obligation to be void and of no effect, otherwise to remain in full force and virtue. Having signed to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.

A. B. for self and *C. D.** (L. S.)

Signed, sealed and delivered, where no stamped paper is to be had, In the presence of *G. H.* *I. K.*

* In this bond the occasion of borrowing the money is not expressed, but the money was in reality borrowed to refit the ship, which being on a voyage from *Bengal* to *London* was obliged to put back to *Bombay* to repair. See *The* EXETER, *Whitford*, 1 Rob. A. R. 176. The occasion therefore of borrowing the money gave the lender the security of the entire interest of the ship. But this Bond, although expressed to be executed by the master for himself and the other part-owner, would not bind the other part-owner personally, unless he had by a previous deed authorized the master to execute such a bond for him. See *part* 3. *ch.* 1 *sect.* 2.

N° II.

FORM OF A BOTTOMRY BILL.

TO ALL MEN TO WHOM THESE PRESENTS SHALL COME. I, *A. B.* of *Bengal*, mariner, part-owner and master of the ship, called the *Exeter*, of the burthen of five hundred tons and upwards, now riding at anchor in *Table-Bay*, at the *Cape of Good Hope*, send greeting:

WHEREAS I, the said *A. B.* part-owner and master of the aforesaid ship called the *Exeter*, now in prosecution of a voyage from *Bengal* to the port of *London*, having put into *Table-Bay* for the purpose of procuring provision and other supplies necessary for the continuation and performance of the voyage aforesaid, am at this time necessitated to take up upon the adventure of the

the said ship, called the *Exeter*, the sum of *one thousand pounds*, sterling monies of *Great Britain*, for setting the said ship to sea, and furnishing her with provisions and necessaries for the said voyage, which sum *C. D.* of the *Cape of Good Hope*, master attendant, hath at my request lent unto me, and supplied me with at the rate of *twelve hundred and twenty pounds* sterling for the said *one thousand pounds*, being at the rate of *one hundred and twenty-two pounds* for every *hundred pounds* advanced as aforesaid, during the voyage of the said ship from *Table-Bay* to *London*. NOW KNOW YE, that I, the said *A. B.* by these presents, do, for me, my executors and administrators, covenant and grant to and with the said *C. D.* that the said ship shall, with the first convoy which shall offer for *England*, after the date of these presents, sail and depart for the port of *London*, there to finish the voyage aforesaid. And I, the said *A. B.* in consideration of the sum of *one thousand pounds* sterling to me in hand paid by the said *C. D.* at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight of the said ship, which is or shall become due for the aforesaid voyage from *Bengal* to the port of *London*, to pay unto the said *C. D.* his executors, administrators or assigns, the sum of *twelve hundred and twenty pounds* of lawful British money, within thirty days next after the safe arrival of the said ship at the port of *London* from the same intended voyage.

AND I, the said *A. B.* do, for me, my executors and administrators, covenant and grant to and with the said *C. D.* his executors and administrators, by these presents, that I, the said *A. B.* at the time of sealing and delivering of these presents, am a true and lawful part-owner and master of the said ship, and have power and authority to charge and engage the said ship with her freight as aforesaid, and that the said ship, with her freight, shall at all times after the said voyage, be liable and chargeable for the payment of the said *twelve hundred and twenty pounds*, according to the true intent and meaning of these presents.

AND lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away before her arrival at the said port of *London* from the said intended voyage, that then the payment of the said *twelve hundred and twenty pounds* shall not be demanded, or be recoverable by the said *C. D.* his executors, administrators or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said *C. D.* his executors and administrators, and that then and from thenceforth every act, matter and thing herein mentioned

mentioned on the part and behalf of the said *A. B.* shall be void; any thing herein contained to the contrary notwithstanding.

IN WITNESS whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the *Cape of Good Hope*, this 15th day of *November*, in the year of our Lord one thousand seven hundred and ninety-seven.

Witness, { *E. F.* / *G. H.* / *I. K.* }

A. B. (L. S.)

N° III.

THE FORM OF A RESPONDENTIA BOND ON A VOYAGE TO THE EAST INDIES.

KNOW ALL MEN by these presents, That we, *James Peter Fearon*, commander of the ship *Belvidere*, in the service of the honourable *East India* Company, and *Peter Douglas* of *Fitzroy-square*, are held and firmly bound to *Hans Busk* of *New Broad-street*, *London*, merchant, in the sum or penalty of *fifteen hundred pounds* of good and lawful money of *Great Britain*, to be paid to the said *Hans Busk*, or to his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, jointly and separately, our heirs, executors and adminstrators, firmly by these presents. Sealed with our seals, dated this *fourth* day of *May*, in the *forty-first* year of the reign of our Sovereign Lord *George the Third*, by the grace of God, of the united kingdom of *Great Britain* and *Ireland* King, defender of the faith, and in the year of our Lord one thousand eight hundred and one.

WHEREAS the above-named *Hans Busk* has, on the day of the date above-written, advanced and lent unto the said *James Peter Fearon* and *Peter Douglas* the sum of *seven hundred and fifty pounds*, upon the goods and merchandizes and effects laden and to be laden on board the good ship or vessel called the *Belvidere*, of the burthen of 987 tons or thereabouts, now riding at anchor in the river of *Thames*, outward-bound to *China*, and whereof *James Peter Fearon* is commander, by his acceptance of a bill of exchange to that amount at four months date

for

for the account of them the said *James Peter Fearon* and *Peter Douglas:* NOW THE CONDITION of this obligation is such, that if the said ship or vessel do and shall with all convenient speed proceed and sail from and out of the said river of *Thames* on a voyage to any port or place, ports or places in the *East Indies*, *China*, *Persia*, or elsewhere beyond the *Cape of Good Hope*, and from thence do and shall sail, return, and come back into the said river of *Thames* at or before the end and expiration of *thirty-six* calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage (the dangers and casualties of the seas excepted); and if the said *James Peter Fearon* and *Peter Douglas*, or either of them, their or either of their heirs, executors or administrators, do and shall within *thirty days* next after the said ship or vessel shall be arrived at her mooring in the said river of *Thames* from her said intended voyage, or at or upon the end and expiration of the said *thirty-six* calendar months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said *Hans Busk*, his executors, administrators or assigns, the full sum of *one thousand and twenty pounds* of lawful money of *Great Britain*, together with *thirteen pounds ten shillings* of like money per calendar month for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said *thirty-six* calendar months over and above *twenty* calendar months, to be accounted from the day of the date above written, or if in the said voyage, and within the said *thirty-six* calendar months to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men of war, or any other casualties shall unavoidably happen, and the said *James Peter Fearon* and *Peter Douglas*, their heirs, executors or administrators, do and shall within *six* calendar months next after such loss, well and truly account for (upon oath if required), and pay unto the said *Hans Busk*, his executors, administrators or assigns, a just and proportionable average on all the goods and effects of the said *James Peter Fearon* carried from *England* on board the said ship or vessel, and the net proceeds thereof, and on all other goods and effects which the said *James Peter Fearon* shall acquire during the said voyage, for or by reason of such goods, merchandizes, and effects, and which shall not be unavoidably lost, then the above written obligation to be void and of none effect, else to stand in full force and virtue.

N° IV.

THE FORM OF AN INSTRUMENT OF HYPOTHECATION OF SHIP AND CARGO.

KNOW all to whom this instrument of bond and bill of maritime risk and bottomry may come, That in the year from the birth of our Lord Jesus Christ 1801, on the 31st day of the month of *January*, in the city of *Lisbon*, in my office personally appeared *Jacomo Mazzola*, captain of the *Imperial* ship called the *Gratitudine*, whom I know to be the real person; and he declared to me the notary in the presence of the witnesses hereinafter mentioned, that within twenty-four hours after the arrival of his said ship at *London*, or any other port, and previous to beginning to make any delivery of the cargo at the port aforesaid, or any other port, that he the captain or whomsoever may act in lieu of him, or in case of his absence, or perform the duties of his said quality, shall or will pay by this bill of risk, sea exchange, and bottomry, to *Francis Manoel Calvert*, professed in the order of Christ, or to his order, the sum of 5,273*l.* 12*s.* sterling, principal and premium of risk and sea exchange, at the rate of 16 *per cent*, the which principal he acknowledged to have received here of the said *Francis Manoel Calvert*, in the good current money of this kingdom, under the denomination of true and legitimate money of sea exchange and bottomry, on the hull, keel, and appurtenances of the aforesaid ship, and therewith to supply the wants of the repairs, caulking, and of the cargo of the same, on which he had effectively invested it; the said *Calvert* taking upon himself, and in consideration of the aforesaid premium of 16 *per cent*, voluntarily agreed for and settled between them, to run the sea risk on the said hull, keel, and appurtenances, and cargo of the said ship, in her ensuing voyage, which the said captain is about prosecuting from this port of *Lisbon* to that of *London*;—these being the risks which the aforesaid *Francis Manoel Calvert* takes on himself, and is to run, such as of the sea, winds, fire, stranding, and shipwreck, enemies, and false friends, detensions of princes, and reprizals, during the whole of the said voyage, excepting nevertheless those of barratry of the master, and of average as well particular as general, the which are expressly excluded; the which risk shall commence to run from the hour the ship shall heave her first anchor to set sail from this port to that of *London*, and shall cease in twenty-four hours after having come to an anchor; and for the ready payment of the aforesaid sum, he the captain binds himself, and his effects in general, dues and funds, both in actual possession and future, and by special mortgage the cargo, freights due, or that may become due; and in

case

case of failure of the prompt payment in due time, he binds himself under this clause of mortgage to pay to him or his order, for all the delay until full payment, at and after the rate of *six per cent per annum*; and there being also present *Andrew Belucci*, mate of the said ship, by whom it was declared, that in case of the absence of the aforesaid captain, he bound himself to fulfil the contents of this bond they thus executed and accepted, after these presents beieg read to them, and I the notary in the name of whomsoever it may concern being absent; to all which were witnesses present, *Joav Pedro Roeks*, who also acted as interpreter as well for the captain as for the mate, he being there vice-consul, and *Manoel Eugenio Coetho*, who together with the parties signed thereto. *J. Joge de Almeida Rorig* the notary wrote it: *Jacomo Mazzola, Andrew Bellucci, Joav Pedro Roeks, Manoel Eugenio Coetho*; and *J. Joge de Almeida Rorig*, notary public of notes in the city of *Lisbon* and its district of his Royal Highness the Prince Regent our lord, whom God preserve, caused this instrument to be transcribed from my book of notes, to which I refer myself, and have subscribed it, and signed it in public form.

In testimony of the truth,

JOGE DE ALMEIDA RORIG.

Whose hand-writing is certified by

FRANCIS ARBOUIN,

Vice-Consul.

Francis Manoel Calvert.

N° V.

ARTICLES OF AGREEMENT BETWEEN THE MASTER AND MARINERS.

IT is hereby agreed between the master, seamen, and mariners of the ship now bound for the port of and the master or commander of the said ship,

THAT in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set, they severally shall and will perform the above-mentioned voyage; and the said master doth hereby agree with and hire the said seamen and mariners for the said voyage at such monthly wages, to be paid pursuant to the laws of *Great Britain*; and they the said

said seamen and mariners do hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said ship or boats thereunto belonging, as become good and faithful seamen and mariners, and at all places where the said ship shall put in or anchor during the said ship's voyage, to do their best endeavours for the preservation of the said ship and cargo, and not to neglect or refuse doing their duty by day or night; nor shall go out of the said ship on board any other vessel, or be on shore under any pretence whatsoever, *till the voyage is ended and the ship discharged of her cargo*, without leave first obtained of the master, captain, or commanding officer on board; and in default thereof they freely agree to be liable to the penalties mentioned in the Act of Parliament, made in the second year of the reign of King *George* the Second, intituled, *An Act for the better Regulation and Government of Seamen in the Merchants Service*; and the Act made in the thirty-seventh year of his late Majesty's reign, intituled, *An Act for preventing the Desertion of Seamen from* British *Merchant Ships trading to His Majesty's Colonies and Plantations in the* West Indies: And it is further agreed by the parties to these presents, that *twenty-four* hours absence, without leave, shall be deemed a total desertion, and render such seamen and mariners liable to the forfeitures and penalties contained in the Acts above recited; that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, be strictly complied with under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with every thing belonging to him or them on board the said vessel: And it is further agreed, that no officer or seamen, or person belonging to the said ship, shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge, and her cargo delivered, not less than *twenty days* in case the seaman is not employed in the delivery: And it is hereby further agreed between the master and officers of the said ship, That whatever apparel, furniture and stores, each of them may receive into their charge, belonging to the said ship, shall be accounted for on her return; and in case any thing shall be lost or damaged through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen to the master and owner of the said ship: And whereas it is customary for the officers and seamen on the ship's return home in the river, and during the time their cargoes are delivering, to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; be it further agreed by the said parties, That neither officer nor seaman shall, on any pretence whatsoever, be entitled to such indulgence, but

shall

shall do their duty by day in discharge of the cargo, and keep such watch by night as the master or commander of the said ship shall think necessary, in order for the preservation of the above: And whereas it often happens that part of the cargo is embezzled after being delivered into lighters, and as such losses are made good by the owners of the ships; be it therefore agreed by these presents, That whatever officer or seaman the master shall think proper to appoint, shall take charge of the cargo in the lighters, and go with the same to the lawful quay, and there deliver his charge to the ship's husband, or his representative, or see the same safely weighed at the King's beam, and in consequence of their true fidelity, such officer or seaman shall be entitled to *two shillings and sixpence* each lighter, exclusive of their monthly pay; and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded, such officer and seaman so appointed shall in that case be entitled to *two shillings and sixpence* for every *twenty-four* hours, exclusive of their said monthly pay; that each seaman and mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to their wages or hire that may become due to him, pursuant to this agreement; that for the due performance of each and every the above-mentioned articles and agreements, and acknowledgment of their being voluntary and without compulsion, or any other clandestine means being used, the said parties have hereto subscribed their names, the day and month set opposite to their respective names.

Place and Time of Entry.	MEN'S NAMES.	Quality.	Witness to each Man's signing.	Pay in the River.		Wages *per* Month, or by the Run for the Voyage.	Whole Wages.		
				Whole.	Half.		£.	s.	d.

N° VI.

STIPULATION FOR THE RETURN OF A SHIP.

MARY ANN.

12 *January* 1804.

ON which day *Bogg* exhibited as proctor, and made himself a party for *George Goodwin Hope*, master of the said ship *Mary Ann*, and produced for sureties *Josiah Culmer* of *Wapping High-street*, mathematical instrument maker, and *James Powell* of the same place, undertaker, who, submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors, and administrators for the said *George Goodwin Hope*, in the sum of *six hundred and eighty-four pounds* of lawful money of *Great Britain*, being double the appraised value of two eighth parts of the said ship, unto *William Fennings* of *Rood Lane, Fenchurch-street, London*, merchant, and *Philip Fennings* of *Harwich*, in the county of *Essex*, owners of the said two-eighth parts or shares of the said ship, for the return of the said ship, to the amount of the shares of the said *William Fennings* and *Philip Fennings*; and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum aforementioned; which caution the said surrogate received on the report of *John Crickett*, marshal of this Court, as to the sufficiency of the said sureties, and, at the petition of *Bogg*, decreed the said ship to be released from the arrest.

Present.

BEDFORD.

N° VII.

6 *Geo.* IV. *c.* 110.

AN ACT for the registering of *British* Vessels.

6 G. 4. c. 103.

WHEREAS an Act was passed in the present Session of Parliament, intituled, *An Act to repeal the several Laws relating to the Customs*, in which it is delared, that the laws of the customs have become intricate by reason of the great number of Acts relating thereto, which have been passed through a long series of years; and that it is therefore highly expedient for the interest of commerce and the ends of justice, and also for affording convenience and facility to all persons who may be subject to the operation of those laws, or who may be authorized to act in the execution thereof, that all the statutes now in force relating

relating to the customs, should be repealed, and that the purposes for which they have from time to time been made should be secured by new enactments, exhibiting more perspicuously and compendiously the various provisions contained in them: And whereas by the said Act, all the laws relating to the registering of British vessels will be repealed; and it is expedient to make regulations for the registering of such ships and vessels, after such repeal shall have effect; be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the fifth day of January one thousand eight hundred and twenty-six, this Act shall come into and be and continue in full force and operation for registering of British vessels, except where any other commencement is hereinafter particular directed.

Commencement of Act.

II. And be it further enacted, That no ship or vessel shall be entitled to any of the privileges or advantages of a British registered ship, until the person or persons claiming property therein shall have caused the same to be registered in manner hereinafter mentioned, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry, and grant such certificate as hereinafter directed; the form of which Certificate shall be as follows; *videlicet*:

No Vessel to enjoy Privileges until registered.

Certificate of Registry.

'THIS is to certify, That in pursuance of an Act passed in the sixth year of the reign of King *George* the fourth, intituled, '*An Act*, [*here insert the title of this Act, the names, occupation, and residence of the subscribing owners*], having taken and 'subscribed the oath required by this Act, and having sworn 'that [he *or* they] together with [*names, occupations, and residence of non-subscribing owners*] [is *or* are] sole owner or owners, 'in the proportions specified on the back hereof, of the ship or vessel called the [*ship's name*] of [*place to which the vessel belongs*], which is of the burthen of [*number of tons*], and 'whereof [*master's name*] is master, and that the said ship or 'vessel was [*when and where built, or condemned as prize, referring to builder's certificate, judge's certificate, or certificate of last registry, then delivered up to be cancelled*], and [*name and employment of surveying officer*] having certified to us that the 'said ship or vessel has [*number*] decks and [*number*] masts, 'that her length from the fore part of the main stem to the after 'part of the stern post aloft is [*number of feet and inches*], 'her breadth at the broadest part [*stating whether that be above or below the main wales*] is [*number of feet and inches*], her '[*height between decks, if more than one deck, or depth in the hold, if only one deck*] is [*number of feet and inches*], that she 'is [*how rigged*] rigged with a [*standing or running*] bowsprit, 'is [*description of stern*] sterned [*carvel or clinker*] built, has

'[*whether any or no*] gallery, and [*kind of head, if any*] head; 'and the said subscribing owners having consented and agreed to 'the above description, and having caused sufficient security to be 'given, as is required by the said Act, the said ship or vessel, 'called the [*name*], has been duly registered at the port of '[*name of port*]. Certified under our hands at the custom 'house, in the said port of [*name of port*], this [*date*] day of '[*name of month*], in the year [*words at length.*]

'[*signed*] Collector.
'[*signed*] Comptroller.'

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following:—

'Names of the several Owners within mentioned.	Number of Sixty-fourth Shares held by each Owner.
'[*Name* ——————]	*Thirty-two.*
'[*Name* ——————]	*Sixteen.*
'[*Name* ——————]	*Eight.*
'[*Name* ——————]	*Eight.*]

'[*signed*] Collector.
'[*signed*] Comptroller.'

Persons authorized to make Registry and grant Certificates.

III. And be it further enacted, That the persons authorized and required to make such registry and grant such certificates shall be the collector and comptroller of His Majesty's customs in any port in the united kingdom of *Great Britain* and *Ireland*, and in the *Isle of Man* respectively, in respect of ships or vessels to be there registered; and the principal officers of His Majesty's customs in the island of *Guernsey* or *Jersey*, together with the governor, lieutenant governor, or commander in chief of those islands respectively, in respect of ships or vessels to be there registered; and the collector and comptroller of His Majesty's customs of any port in the colonies, plantations, islands, and territories to His Majesty belonging in *Asia*, *Africa*, and *America*, together with the governor, lieutenant governor, or commander in chief of such colonies, plantations, islands and territories respectively, in respect of ships or vessels to be there registered; and the collector of duties at any port in the territories under the government of the *East India* Company, and other territories belonging to His Majesty within the limits of the charter of the said company, payable to the said company, or any other person of the rank in the said company's service of senior merchant, or of six years standing in the said service, being respectively appointed to act in the execution of this Act, by any of the governments of the said company in *India*, in any ports in which there shall be no collector and comptroller of His Majesty's customs, in respect of ships or vessels to be there registered; and

and the governor, lieutenant governor, or commander in chief of *Malta*, *Gibraltar*, *Heligoland*, and *Cape of Good Hope* respectively, in respect of ships or vessels to be there registered: Provided always, that no ship or vessel shall be registered at *Malta*, *Gibraltar*, or *Heligoland*, except such as are wholly of the built of those places respectively, and such ships or vessels shall not be registered elsewhere; and that such ships or vessels so registered shall not be entitled to the privileges and advantages of British ships in any trade between the said united kingdom and any of the colonies, plantations, islands, or territories in *America* to His Majesty belonging: Provided also, that wherever in and by this Act it is directed or provided that any act, matter or thing, shall and may be done or performed by to or with any collector and comptroller of His Majesty's customs, the same shall or may be done or performed by to or with the principal officers of customs in the islands of *Guernsey* or *Jersey*, together with the governor, lieutenant governor, or commander in chief of those islands respectively, and also by to or with such collector or other person in *India* in the service of the *East India* company as aforesaid, and also by to or with the governor, lieutenant governor, or commander in chief of *Malta*, *Gibraltar*, *Heligoland*, or *Cape of Good Hope*, and according as the same act, matter or thing, is to be done or performed at the said several and respective places, and within the jurisdiction of the said several persons respectively: Provided also, that wherever in and by this Act it is directed or provided that any act, matter or thing, shall or may be done or performed by to or with the commissioners of His Majesty's customs, the same shall or may be done or performed by to or with the said commissioners, or any two or more of them, in *England*, *Ireland*, or *Scotland* respectively, and also by to or with the governor, lieutenant governor, or commander in chief of any place where any ship or vessel may be registered under the authority of this Act, so far as such act, matter or thing, can be applicable to the registering of any ship or vessel at such place.

Provision as to Vessels registered at Malta, Gibraltar, or Heligoland.

Certain Powers of Collectors and Comptrollers, by whom to be exercised in certain cases.

Acts may be done by two Commissioners of customs in England, Ireland, and Scotland, and by governors, &c. where vessels may be registered.

IV. And be it further enacted, That in case any ship or vessel not being duly registered, and not having obtained such certificate of registry as aforesaid, shall exercise any of the privileges of a British ship, the same shall be subject to forfeiture, and also all the guns, furniture, ammunition, tackle and apparel, to the same ship or vessel belonging, and shall and may be seized by any officer or officers of His Majesty's customs: provided always, that nothing in this Act shall extend, or be construed to extend, to affect the privileges of any ship or vessel which shall have been registered by virtue of any Act or Acts which was or were in force for the registry of British ships, and granting certificates thereof prior to the thirty-first day of December one thousand eight hundred and twenty-three, or by virtue of any Act or Acts which

Ships exercising privileges before registry, to be forfeited.

but not to affect vessels already registered, till required to be registered de novo.

which was or were in force at the time of the commencement of this Act, until such time or times as such ships or vessels shall be required by this Act to be registered *de novo* under the regulations thereof.

What ships are entitled be be registered.

V. And be it further enacted, That no ship or vessel shall be registered, or having been registered, shall be deemed to be duly registered by virtue of this Act, except such as are wholly of the built of the said united kingdom, or of the *Isle of Man*, or of the islands of *Guernsey* or *Jersey*, or of some of the colonies, plantations, islands or territories in *Asia*, *Africa*, or *America*, or of *Malta*, *Gibraltar*, or *Heligoland*, which belong to His Majesty, his heirs or successors, at the time of the building of such ships or vessels, or such ships or vessels as shall have been condemned in any court of Admiralty as prize of war, or such ships or vessels as shall have been condemned in any competent court as forfeited for the breach of the laws made for the prevention of the slave trade, and which shall wholly belong and continue wholly to belong to His Majesty's subjects, duly entitled to be owners of ships or vessels registered by virtue of this Act.

Foreign repairs not to exceed 20s. per ton.

VI. And be it further enacted, That no ship or vessel shall continue to enjoy the privileges of a British ship after the same shall have been repaired in a foreign country, if such repairs shall exceed the sum of twenty shillings for every ton of the burthen of the said ship or vessel, unless such repairs shall have been necessary by reason of extraordinary damage sustained by such ship or vessel during her absence from His Majesty's dominions, to enable her to perform the voyage in which she shall have been engaged, and to return to some port or place of the said dominions; and whenever any ship or vessel which has been so repaired in a foreign country shall arrive at any port in His Majesty's dominions as a British registered ship or vessel, the master or other person having the command or charge of the same shall, upon the first entry thereof, report upon oath to the collector and comptroller of His Majesty's customs at such port, that such ship or vessel has been so repaired, under penalty of twenty shillings for every ton of the burthen of such ship or vessel according to the admeasurement thereof; and if it shall be proved to the satisfaction of the commissioners of His Majesty's customs, that such ship or vessel was seaworthy at the time when she last departed from any port or place in His Majesty's dominions, and that no greater quantity of such repairs have been done to the said vessel than was necessary as aforesaid, it shall be lawful for the said commissioners, upon a full consideration of all the circumstances, to direct the collector and comptroller of the port where such ship or vessel shall have arrived, or where she shall then be, to certify on the certificate of the registry of such ship or vessel, that it has been proved to the satisfaction of the commissioners of His Majesty's customs, that the

The master, on arrival, to report such repairs.

Necessity of such repairs to be proved to commissioners of customs.

the privileges of the said ship or vessel have not been forfeited notwithstanding the repairs which have been done to the same in a foreign country.

By reason of combination of workmen, power given to Privy Council to permit owners of vessels to proceed to foreign ports for repairs.

VII. And whereas it has recently happened that the owners of British ships have been unable to effect the necessary repairs to their vessels in British ports, by reason of combinations of workmen: And whereas it is expedient to make provisions for relief of the ship owners in such cases, in order that the voyages of British ships may not be frustrated by such means, to the great detriment of the commerce and navigation of the empire; be it therefore enacted, That for two years from and after the passing of this Act, when and as often as it shall appear expedient to the Lords and others of His Majesty's Privy Council, it shall be lawful for them, or any three or more of them, to make and issue their order in behalf of the master or owners of any such ship, permitting the same to proceed to some foreign port or ports, to be named in such order, and there to be repaired to such extent as shall be necessary for the voyage in which such ship is engaged.

Power also given to Privy Council to permit vessels to proceed on their voyage with a less number of British seamen than is required by law.

VIII. And whereas by the law of navigation British ships cannot proceed to sea unless they be navigated by a crew, of which three-fourths at least are British seamen, and it has recently happened that the owners of British ships have been unable to procure proper crews for their ships, by reason of combinations of seamen; be it therefore enacted, That for two years from and after the passing of this Act, when and as often as it shall appear expedient to the Lords and others of His Majesty's Privy Council, it shall be lawful for them, or any three or more of them, to make and issue their order in behalf of the master or owners of any such ship, permitting such ship to proceed upon her voyage with a less number of British seamen than is required by the law of navigation; and every ship or vessel which shall be navigated with the number of British seamen required in such order shall be deemed to be duly navigated; any thing in the law of navigation to the contrary notwithstanding.

Ships declared unseaworthy, to be deemed ships lost or broken up.

IX. And be it further enacted, That if any ship or vessel registered under the authority of this or any other Act, shall be deemed or declared to be stranded or unseaworthy, and incapable of being recovered or repaired to the advantage of the owners thereof, and shall for such reasons be sold by order or decree of any competent court for the benefit of the owners of such ship or vessel, or other persons interested therein, the same shall be taken and deemed to be a ship or vessel lost or broken up to all intents and purposes within the meaning of this Act, and shall never again be entitled to the privileges of a British-built ship for any purposes of trade or navigation.

British ships captured not to be again en-

X. And be it further enacted, That no British ship or vessel, which has been or shall hereafter be captured by and become

titled to registry; but ships condemned in Courts of Admiralty may be registered.

prize to an enemy or sold to foreigners, shall again be entitled to the privileges of a British ship: Provided always, that nothing contained in this Act shall extend to prevent the registering of any ship or vessel whatever which shall be condemned in any Court of Admiralty as prize of war, or in any competent court for breach of laws made for the prevention of the slave trade.

Ships shall be registered at the port to which they belong.

XI. And be it further enacted, That no such registry shall hereafter be made, or certificate thereof granted, by any person or persons hereinbefore authorized to make such registry and grant such certificate, in any other port or place than the port or place to which such ship or vessel shall properly belong, except so far as relates to such ships or vessels as shall be condemned as prizes in any of the islands of *Guernsey*, *Jersey*, or *Man*, which ships or vessels shall in future be registered in manner hereinafter directed; but that all and every registry and certificate, granted in any port or place to which any such ship or vessel does not properly belong, shall be utterly null and void to all intents and purposes, unless the officers aforesaid shall be specially authorized and empowered to make such registry and grant such certificate in any other port, by an order in writing under the hands of the commissioners of His Majesty's customs, which order the said commissioners are hereby authorized and empowered to issue in manner aforesaid, if they shall see fit; and at every port where registry shall be made in pursuance of this Act, a book shall be kept by the collector and comptroller, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used, shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year; and such collector and comptroller shall forthwith, or within one month at the farthest, transmit to the commissioners of His Majesty's customs, a true and exact copy, together with the number of every certificate which shall be by them so granted.

Commissioners of customs may permit registry at other ports.

Book of registers to be kept.

Ports to which vessels shall be deemed to belong.

XII. And be it further enacted, That every ship or vessel shall be deemed to belong to some port at or near to which some or one of the owners, who shall take and subscribe the oath required by this Act before registry be made, shall reside; and whenever such owner or owners shall have transferred all his or their share or shares in such ship or vessel, the same shall be registered *de novo* before such ship or vessel shall sail or depart from the port to which she shall then belong, or from any other port which shall be in the same part of the united kingdom, or the same colony, plantation, island, or territory as the said port shall be in: Provided always, that if the owner or owners of such ship or vessel cannot in sufficient time comply with the requisites of this Act, so that registry may be made before it shall be necessary for such ship or vessel to sail or depart upon another voyage, it shall be lawful for

Change of subscribing owners to require registry de novo.

If registry de novo cannot be made, ship may go one voyage with

for the collector and comptroller of the port where such ship or vessel may then be, to certify upon the back of the existing certificate of registry of such ship or vessel, that the same is to remain in force for the voyage upon which the said ship or vessel is then about to sail or depart: Provided also, that if any ship or vessel shall be built in any of the colonies, plantations, islands, or territories in *Asia*, *Africa*, or *America*, to His Majesty belonging, for owners residing in the united kingdom, it shall be lawful for such ship or vessel to proceed to any part of the united kingdom, whether by a direct or circuitous voyage, and there to import a cargo, before registry shall have been made of such ship or vessel; provided the master of such ship or vessel, or the agent for the owner or owners thereof, shall have produced to the collector and comptroller of the port at or near to which such ship or vessel was built, or from which she shall be cleared for her voyage as aforesaid, the certificate of the builder required by this Act, and shall have made oath before such collector and comptroller, of the names and descriptions of the principal owners of such ship or vessel, and that she is the identical ship or vessel mentioned in such certificate of the builder, and that no foreigner, to the best of his knowledge and belief, has any interest therein; whereupon the collector and comptroller of such port shall cause such ship or vessel to be surveyed and measured in like manner as is directed for the purpose of registering any ship or vessel, and shall give the master of such ship or vessel a certificate, under their hands and seals, purporting to be under the authority of this Act, and stating when and where, and by whom such ship or vessel was built, the description, tonnage and other particulars required on registry of any ship or vessel, and the voyage for which such ship or vessel is cleared by them; and such certificate shall, for such voyage, have all the force and virtue of a certificate of registry under this Act,* and such collector and comptroller shall transmit a copy of such certificate, to the commissioners of His Majesty's customs.

permission indorsed on certificate of registry.

Ships built in foreign possessions for owners resident in united kingdom, may proceed on their voyage, on receiving certificate from the collector, &c.

XIII. And be it further enacted, That no person who has taken the oath of allegiance to any foreign state, except under the terms of some capitulation, unless he shall afterwards become a denizen

Persons residing in foreign

* See 7th Geo. 4. c. 48. § 25. "Whereas another Act was passed in the last Session of Parliament, intituled, *An Act for the registering of* British *Vessels*, and it is expedient to alter and amend the same in manner hereinafter provided: And whereas by the said Act it is provided, that if any ship be built in *Asia*, *Africa* or *America*, for owners residing in the united kingdom, whether by a direct or circuitous voyage, and that such certificate shall for such voyage have all the force and virtue of a certificate of registry under that Act; be it therefore enacted, that such certificate shall be in like force for the navigation of such ship for any voyages whatever, during the term of two years, from the date of such certificate, if such ship shall not sooner arrive at some place in the united kingdom."

countries may not be owners;

denizen or naturalized subject of the united kingdom, by His Majesty's letters patent, or by Act of Parliament; nor any person usually residing in any country not under the dominion of His Majesty, his heirs and successors, unless he be a member of some British factory, or agent for or partner in any house or co-partnership, actually carrying on trade in *Great Britain* or *Ireland*, shall be entitled to be the owner, in whole or in part, directly or indirectly, of any ship or vessel, required and authorized to be registered by virtue of this Act*.

unless in British factories, or agents for or partners in British houses.

Oath to be taken by subscribing owners previous to registry.

XIV. And be it further enacted, That no registry shall henceforth be made, or certificate granted, until the following oath be taken and subscribed before the person or persons hereinbefore authorized to make such registry and grant such certificate respectively, (which they are hereby respectively empowered to administer), by the owner of such ship or vessel, if such ship or vessel is owned by or belongs to one person only; or in case there shall be two joint owners, then by both of such joint owners, if both shall be resident within twenty miles of the port or place where such register is required, or by one of such owners, if one or both of them shall be resident at a greater distance from such port or place; or if the number of such owners or proprietors shall exceed two, then by the greater part of the number of such owners or proprietors, if the greater number of them shall be resident within twenty miles of such port or place as aforesaid, not in any case exceeding three of such owners or proprietors, unless a greater number shall be desirous to join in taking and subscribing the said oath, or by one of such owners, if all, or all except one, shall be resident at a greater distance:—

Proportion of owners who shall subscribe and take the oath.

Form of Oath.

'I, *A. B.* of [*place of residence and occupation*], do make oath, 'That the ship or vessel [*name*] of [*port or place*] whereof '[*master's name*] is at present master, being [*kind of built, 'burthen, et cætera, as described in the certificate of the surveying 'officer*], was [*when and where built, or if prize or forfeited, cap- 'ture and condemnation, as such*], and that I, the said *A. B.* [*and 'the other owners names and occupations, if any, and where they 'respectively reside, videlicet, town, place, or parish, and county, 'or if member of and resident in any factory in foreign parts, or 'in any foreign town or city, being an agent for or partner in any 'house or co-partnership, actually carrying on trade in* Great 'Britain *or* Ireland, *the name of such factory, foreign town, or 'city, and the names of such house or co-partnership*], am [*or* are] 'sole owner [*or* owners] of the said vessel, and that no other 'person or persons whatever hath or have any right, title, interest, 'share, or property therein or thereto; and that I the said *A. B.* '[*and the said other owners, if any*] am [*or* are] truly and *bonâ 'fide*, a subject [*or* subjects] of *Great Britain*; and that I, the 'said

* See as to the late Levant Company, 7th Geo. 4. c. 48. sect. 27.

'said *A. B.* have not [*nor have any of the other owners, to the best of my knowledge and belief*] taken the oath of allegiance 'to any foreign state whatever, [*except under the terms of some capitulation, describing the particulars thereof,*] or that since 'my taking [*or* his *or* their taking] the oath of allegiance to '[*naming the foreign states respectively to which he or any of the said owners shall have taken the same*], I have, [*or* he *or* they 'hath *or* have] become a denizen [*or* denizens, *or* naturalized 'subject *or* subjects, *as the case may be*] of the united kingdom 'of *Great Britain* and *Ireland*, by His Majesty's letters patent, 'or by an Act of Parliament [*naming the times when such letters of denization have been granted respectively, or the year or years in which such Act or Acts for naturalization have passed respectively*], and that no foreigner, directly or indirectly, hath any 'share or part interest in the said ship or vessel.'

Provided always, that if it shall become necessary to register any ship or vessel belonging to any corporate body in the united kingdom, the following oath, in lieu of the oath hereinbefore directed, shall be taken and subscribed by the secretary or other proper officer of such corporate body; (that is to say),

'I, *A. B.* secretary or officer of [*name of company or corporation*], do make oath, That the ship or vessel [*name*] of [*port*] 'whereof [*master's name*] is at present master, being [*kind of built, burthen, et cætera, as described in the certificate of the surveying officer*] was [*when and where built, or if prize or forfeited, capture and condemnation as such*], and that the 'same doth wholly and truly belong to [*name of company or corporation.*]'

Addition to oath in case the required number of owners do not attend.

XV. And be it further enacted, That in case the required number of joint owners or proprietors of any ship or vessel shall not personally attend to take and subscribe the oath hereinbefore directed to be taken and subscribed, then and in such case such owner or owners, proprietor or proprietors, as shall personally attend, and take and subscribe the oath aforesaid, shall further make oath, that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not to the best of his or their knowledge or belief wilfully absented himself or themselves, in order to avoid the taking the oath hereinbefore directed to be taken and subscribed, or is or are prevented by illness from attending to take and subscribe the said oath.

Vessels to be surveyed previous to registry.

XVI. And in order to enable the collector and comptroller of His Majesty's customs to grant a certificate, truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of His Majesty's customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted; be it enacted, That previous to the registering

tering or granting of any certificate of registry as aforesaid, some one or more person or persons appointed by the commissioners of His Majesty's customs, (taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships) shall go on board of every such ship or vessel as is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed, in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence, by the said master; and shall deliver a true and just account in writing of all such particulars of the built, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited, to the collector and comptroller authorized as aforesaid to make such registry and grant such certificate of registry; and the said master or other person, attending on the part of the owner or owners, is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

Certificate of survey to be given;

owner or master concurring therein.

Mode of admeasurement to ascertain tonnage.

XVII. And be it further enacted, That for the purpose of ascertaining the tonnage of ships or vessels, the rule for admeasurement shall be as follows; *videlicet*, the length shall be taken on a straight line along the rabbet of the keel, from the back of the main sternpost to a perpendicular line from the fore part of the main stem under the bowsprit, from which subtracting three-fifths of the breadth, the remainder shall be esteemed the just length of the keel to find the tonnage, and the breadth shall be taken from the outside of the outside plank in the broadest part of the ship, whether that shall be above or below the main wales, exclusive of all manner of doubling planks that may be wrought upon the sides of the ship, then multiplying the length of the keel by the breadth so taken, and that product by half the breadth, and dividing the whole by ninety-four, the quotient shall be deemed the true contents of the tonnage.

Ascertaining tonnage when vessels are afloat.

XVIII. And whereas it would in some cases endanger ships or vessels, to cause them to be laid on shore; be it therefore enacted, That in cases where it may be necessary to ascertain the tonnage of any ship or vessel when afloat, according to the foregoing rule, the following method shall be observed; that is to say, drop a plumb line over the stern of the ship, and measure the distance between such line and the after part of the stern post at the load water mark; then measure from the top of the plumb line, in a parallel direction with the water, to a perpendicular point immediately over the load water mark at the fore part of the main stem, subtracting from such measurement the above distance,

distance, the remainder will be the ship's extreme, from which is to be deducted three inches for every foot of the load draught of water for the rake abaft, also three-fifths of the ship's breadth for the rake forward, the remainder shall be esteemed the just length of the keel to find the tonnage; and the breadth shall be taken from outside to outside of the plank in the broadest part of the ship, whether that shall be above or below the main wales, exclusive of all manner of sheathing or doubling that may be wrought on the side of the ship; then multiplying the length of the keel for tonnage by the breadth so taken, and that product by half the breadth, and dividing by ninety-four, the quotient shall be deemed the true contents of the tonnage.

Engine room in steam vessels to be deducted.

XIX. Provided always, and be it further enacted, That in each of the several rules hereinbefore prescribed, when used for the purpose of ascertaining the tonnage of any ship or vessel propelled by steam, the length of the engine room shall be deducted from the whole length of such ship or vessel, and the remainder shall, for such purpose, be deemed the whole length of the same.

Tonnage, when so ascertained, to be ever after deemed the tonnage.

XX. And be it further enacted, That whenever the tonnage of any ship or vessel shall have been ascertained according to the rule herein prescribed (except in the case of ships or vessels which have been admeasured afloat), such account of tonnage shall ever after be deemed the tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form and burthen of such ship or vessel, or it shall be discovered that the tonnage of such ship or vessel had been erroneously taken and computed.

Bond to be given at the time of registry.

XXI. And be it further enacted, That at the time of the obtaining of the certificate of registry as aforesaid, sufficient security by bond shall be given to His Majesty, His Heirs and Successors, by the master and such of the owners as shall personally attend as is hereinbefore required, such security to be approved of and taken by the person or persons hereinbefore authorized to make such registry, and grant such certificate of registry at the port or place in which such certificate shall be granted, in the penalties following; that is to say, if such ship or vessel shall be a decked vessel, or be above the burthen of fifteen tons and not exceeding fifty tons, in the penalty of one hundred pounds; if exceeding the burthen of fifty tons and not exceeding one hundred tons, in the penalty of three hundred pounds; if exceeding the burthen of one hundred tons and not exceeding two hundred tons, in the penalty of five hundred pounds; if exceeding the burthen of two hundred tons and not exceeding three hundred tons, in the penalty of eight hundred pounds; and if exceeding the burthen of three hundred tons, in the penalty of one thousand pounds; and the condition of every such

Conditions that the certificate shall be solely made use of for the service of the vessel, &c.

such bond shall be, that such certificate shall not be sold, lent, or otherwise disposed of to any person or persons whatever, and that the same shall be solely made use of for the service of the ship or vessel for which it is granted, and that in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port to which she belongs, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the Crown, or shall under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up within one month after the arrival of the master in any port or place in His Majesty's dominions to the collector and comptroller of some port in *Great Britain*, or of the *Isle of Man*, or of the *British* plantations, or to the governor, lieutenant governor, or commander in chief for the time being of the islands of *Guernsey* or *Jersey*; and that if any foreigner, or any person or persons for his use and benefit shall purchase or otherwise become entitled to the whole or any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of *Great Britain*, *Guernsey*, *Jersey*, *Man*, or the *British* colonies, plantations, islands or territories aforesaid, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the person or persons hereinbefore authorized to make registry and grant certificate of registry at such port or place respectively as aforesaid; and if such ship or vessel shall be in any foreign port when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul or other chief British officer resident at or nearest to such foreign port, or if such ship or vessel shall be at sea when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul or other chie f British officer at the foreign port or place in or at which the master or other person having or taking the charge or command of such ship or vessel shall first arrive, after such purchase or transfer of property at sea, immediately after his arrival in such foreign port; but if such master or other person who had the command thereof at the time of such purchase or transfer of property at sea, shall not arrive at a foreign port, but shall arrive at some port of *Great Britain*, *Guernsey*, *Jersey*, *Man*, or His Majesty's said colonies, plantations, islands, or territories, then that the same shall be delivered up in manner aforesaid, within fourteen days after the arrival of such ship or vessel, or of the persons who had the command thereof in any port

port of *Great Britain, Guernsey, Jersey, Man*, or any of His Majesty's said colonies, plantations, islands, or territories: Provided always, that if it shall happen that at the time of registry of any ship or vessel the same shall be at any other port than the port to which she belongs, so that the master of such ship or vessel cannot attend at the port of registry to join with the owner or owners in such bond as aforesaid, it shall be lawful for him to give a separate bond, to the like effect, at the port where such ship or vessel may then be, and the collector and comptroller of such other port shall transmit such bond to the collector and comptroller of the port where such ship or vessel is to be registered, and such bond, and the bond also given by the owner or owners, shall together be of the same effect against the master and owner or owners, or either of them, as if they had bound themselves jointly and severally in one bond.

If ship, at the time of registry, be at any other port than that of registry, the master may there give bond.

XXII. And be it further enacted, That when and so often as the master or other person having or taking the charge or command of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, the certificate of registry belonging to such ship or vessel, who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers, which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of His Majesty's customs: Provided always, that before the name of such new master shall be indorsed on the certificate of registry, he shall be required to give and shall give a bond, in the like penalties, and under the same conditions as are contained in the bond hereinbefore required to be given at the time of registry of any ship or vessel *.

When master is changed, new master to give similar bond, and his name to be indorsed on certificate of registry.

XXIII. And be it further enacted, That if any person whatever shall, at any time have possession of and wilfully detain any certificate of registry, granted under this or any other Act, which ought to be delivered up to be cancelled according to any of the conditions of the bond hereinbefore required to be given upon the registry of any ship or vessel, such person is hereby required and enjoined to deliver up such certificate of registry, in manner directed

Certificate of registry to be given up, as directed by the bond.

* By 6th Geo. 4. c. 107. s. 125. the officers of the customs may refuse to permit any person to act as master, whose name shall not have been inserted in or indorsed upon the certificate of registry as master.

directed by the conditions of such bond, in the respective cases and under the respective penalties therein provided.

Name of vessel which has been registered never afterwards to be changed.

Names to be painted on the stern.

Penalty 100 *l.*

XXIV. And be it further enacted, That it shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel, other than that by which she was first registered, in pursuance of this or any other Act; and that the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or yellow letters, of a length not less than four inches, upon a black ground, on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same; and that if such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in any cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate, or in anywise hide or conceal, or cause, or procure, or permit the same to be done (unless in the case of square-rigged vessels in time of war), or shall in any written or printed paper, or other document, describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe, or cause, or procure, or permit such ship or vessel to be described, by any other name, to any officer or officers of His Majesty's revenue in the due execution of his or their duty, then and in every such case such owner or owners, or master, or other person having or taking the charge or command of such ship or vessel, shall forfeit the sum of one hundred pounds.

Builder's certificate of particulars of ship.

XXV. And be it further enacted, That all and every person and persons, who shall apply for a certificate of the registry of any ship or vessel, shall and they are hereby required to produce, to the person or persons authorized to grant such certificate, a true and full account, under the hand of the builder of such ship or vessel, of the proper denomination, and of the time when and the place where such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, together with the name of the first purchaser or purchasers thereof, (which account such builder is hereby directed and required to give under his hand, on the same being demanded by such person or persons so applying for a certificate as aforesaid), and shall also make oath before the person or persons hereinbefore authorized to grant such certificate, (which oath he or they is or are hereby authorized to administer), that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

Oath to be made thereto.

XXVI. And be it further enacted, That if the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the commissioners of His Majesty's customs, such commissioners shall and may permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted: Provided always, that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such commissioners shall and may grant a licence for the present use of such ship or vessel, which licence shall, for the time and to the extent specified therein and no longer, be of the same force and virtue as a certificate of registry granted under this Act: Provided always, that before such registry *de novo* be made, the owner or owners and master shall give bond to the commissioners aforesaid, in such sum as to them shall seem fit, with a condition that if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper officers of His Majesty's customs, to be cancelled, and that no illegal use has been or shall be made thereof with his or their privity or knowledge; and further, that before any such licence shall be granted as aforesaid, the master of such ship or vessel shall also make oath that the same has been registered as a British ship, naming the port where and the time when such registry was made, and all the particulars contained in the certificate thereof, to the best of his knowledge and belief, and shall also give such bond, and with the same condition as is before mentioned: Provided also, that before any such licence shall be granted, such ship or vessel shall be surveyed in like manner as if a registry *de novo* were about to be made thereof; and the certificate of such survey shall be preserved by the collector and comptroller of the port to which such ship or vessel shall belong; and in virtue thereof it shall be lawful for the said commissioners, and they are hereby required to permit such ship or vessel to be registered after her departure, whenever the owner or owners shall personally attend to take and subscribe the oath required by this Act before registry be made, and shall also comply with all other requisites of this Act, except so far as relates to the bond to be given by the master of such ship or vessel; which certificate of registry the said commissioners shall and may transmit to the collector and comptroller of any other port, to be by them given to the master of such ship or vessel, upon his giving such bond, and delivering up the licence which had been granted for the then present use of such ship or vessel.

Certificate of registry lost or mislaid.

Commissioners may permit registry de novo; or grant a licence.

Bond respecting lost certificate of registry: Condition.

Oath to be made before licence be granted.

Before licence be granted, ship to be surveyed as if for registry;

and registry may be made after departure of the ship;

and certificate transmitted to be exchanged for the licence.

XXVII. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any

Persons detaining certificate of

registry to forfeit 100*l.*

any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted; be it therefore enacted, That in case the master of any ship or vessel, or any other person who shall have received or obtained by any means, or for any purpose whatever the certificate of the registry thereof (whether such master or other person shall be a part owner or not), shall wilfully detain and refuse to deliver up the same to the proper officers of His Majesty's customs, for the purposes of such ship or vessel, as occasion shall require, it may and shall be lawful to and for any owner or owners of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, to make complaint on oath against the master of the ship or vessel, or other person, who shall so detain and refuse to deliver up the same, of such detainer and refusal, to any justice of the peace residing near to the place where such detainer and refusal shall be, in *Great Britain* or *Ireland*, or to any member of the supreme court of justice, or any justice of the peace in the islands of *Jersey*, *Guernsey*, or *Man*, or in any colony, plantation, island, or territory to His Majesty belonging, in *Asia*, *Africa*, or *America*, or *Malta*, *Gibraltar*, or *Heligoland*, where such detainer and refusal shall be in any of the places last mentioned; and on such complaint the said justice or other magistrate shall and is hereby required by warrant under his hand and seal, to cause such master or other person to be brought before him to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of the master or other person, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said master or other person, such master or other person shall be thereof convicted, and shall forfeit and pay the sum of one hundred pounds, and on failure of payment thereof he shall be committed to the common gaol, there to remain without bail or mainprize for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than three months nor more than twelve months; and the said justice or other magistrate shall and he is hereby required to certify the aforesaid detainer, refusal, and conviction, to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*; and if such master or other person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the justice or other magistrate cannot be executed upon

Justice to certify detainer, and ship to be registered de novo.

If persons detaining certificate have absconded, ship may be

upon him, and proof thereof shall be made to the satisfaction of the commissioners of His Majesty's customs, it shall be lawful for the said commissioners to permit such ship or vessel to be registered *de novo*, or otherwise, in their discretion, to grant a licence for the present use of such ship or vessel, in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

registered as in case of lost certificate.

XXVIII. And be it further enacted, That if any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered, so as not to correspond with all the particulars contained in the certificate of her registry, in such case such ship or vessel shall be registered *de novo*, in manner hereinbefore required, as soon as she returns to the port to which she belongs, or to any other port which shall be in the same part of the united kingdom, or in the same colony, plantation, island, or territory, as the said port shall be in, on failure whereof such ship or vessel shall, to all intents and purposes, be considered and deemed and taken to be a ship or vessel not duly registered.

Ship altered in certain manner to be registered de novo.

XXIX. And be it further enacted, That the owner or owners of all such ships and vessels as shall be taken by any of His Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any court of admiralty, or of such ships or vessels as shall be condemned in any competent court as forfeited for breach of the laws for the prevention of the slave trade, shall, upon registering such ship or vessel, before he or they shall obtain such certificate as aforesaid, produce to the collector and comptroller of His Majesty's customs, a certificate of the condemnation of such ship or vessel, under the hand and seal of the judge of the court in which such ship or vessel shall have been condemned (which certificate such judge is hereby authorized and required to grant), and also a true and exact account in writing of all the particulars contained in the certificate hereinbefore set forth, to be made and subscribed by one or more skilful person or persons, to be appointed by the court then and there to survey such ship or vessel, and shall also make oath before the collector and comptroller, that such ship or vessel is the same vessel which is mentioned in the certificate of the judge aforesaid.

Vessels condemned as prize, or for breach of laws against slave trade, certificate of condemnation to be produced.

XXX. Provided always, and be it further enacted, That no ship or vessel which shall be taken and condemned as prize or forfeiture as aforesaid, shall be registered in the islands of *Guernsey*, *Jersey*, or the *Isle of Man*, although belonging to His Majesty's subjects residing in those islands, or in some one or other of them; but the same shall be registered either at *Southampton*, *Weymouth*, *Exeter*, *Plymouth*, *Falmouth*, *Liverpool*, or *Whitehaven*, by the collector and comptroller at such ports respectively, who are hereby authorized and required to register

Prize vessels not to be registered at Guernsey, Jersey, or Man. Where to be registered.

such ship or vessel, and to grant a certificate thereof in the form and under the regulations and restrictions in this Act contained.

Transfer of interest to be made by bill of sale.

XXXI. And be it further enacted, That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall after registry thereof be sold to any other or others of His Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel therein intended be effectually proved thereby.

Reciting certificate of registry.

Bill of sale not void by error of recital, &c.

Property in ships to be divided into sixty-four parts or shares.

XXXII. And be it further enacted, That the property in every ship or vessel, of which there are more than one owner, shall be taken and considered to be divided in sixty-four parts or shares, and the proportion held by each owner shall be described in the registry as being a certain number of sixty-fourth parts or shares; and that no person shall be entitled to be registered as an owner of any ship or vessel in respect of any proportion of such ship or vessel, which shall not be an integral sixty-fourth part or share of the same; and upon the first registry of any ship or vessel, the owner or owners who shall take and subscribe the oath required by this Act, before registry be made, shall also declare upon oath the number of such parts or shares then held by each owner, and the same shall be so registered accordingly: Provided always, that if it shall at any time happen that the property of any owner or owners in any ship or vessel cannot be reduced, by division, into any number of integral sixty-fourth parts or shares, it shall and may be lawful for the owner or owners of such fractional parts as shall be over and above such number of integral sixty-fourth parts or shares into which such property in any ship or vessel can be reduced by division, to transfer the same one to another, or jointly, to any new owner, by memorandum upon their respective bills of sale, or by fresh bill of sale, without such transfer being liable to any stamp duty: Provided also, that the right of such owner or owners to such fractional parts shall not be affected by reason of the same not having been registered: Provided also, that it shall be lawful for any number of such owners, named and described in such registry, being partners in any house or co-partnership actually carrying on trade in any part of His Majesty's dominions to hold any ship or vessel, or any share or shares of any ship or vessel, in the name of such house or co-partnership, as joint owners thereof, without distinguishing the proportionate

Oath upon first registry to state the number of such shares held by each owner.

Smaller portions may be conveyed without stamp.

Partners may hold ships or shares without distinguishing proportionate interest of each owner.

proportionate interest of each of such owners, and that such ship or vessel, or the share or shares thereof so held in copartnership, shall be deemed and taken to be partnership property to all intents and purposes, and shall be governed by the same rules, both in law and equity, as relate to and govern all other partnership property in any other goods, chattels and effects whatsoever.

Only thirty-two persons to be owners of any ship at one time. Not to affect the equitable title of heirs, &c. Joint stock companies.

XXXIII. And be it further enacted, That no greater number than thirty-two persons shall be entitled to be legal owners at one and the same time of any ship or vessel, as tenants in common, or to be registered as such: Provided always, that nothing herein contained shall affect the equitable title of minors, heirs, legatees, creditors or others, exceeding that number, duly represented by or holding from any of the persons within the said number, registered as legal owners of any share or shares of such ship or vessel: Provided also, that if it shall be proved to the satisfaction of the commissioners of His Majesty's customs, that any number of persons have associated themselves as a joint stock company, for the purpose of owning any ship or vessel, or any number of ships or vessels, as the joint property of such company, and that such company have duly elected or appointed any number, not less than three of the members of the same, to be trustees of the property in such ship or vessel, or ships or vessels so owned by such company, it shall be lawful for such trustees, or any three of them, with the permission of such commissioners, to take the oath required by this Act, before registry be made, except that instead of stating therein the names and descriptions of the other owners, they shall state the name and description of the company to which such ship or vessel, or ships or vessels, shall in such manner belong.

Trustees may apply to have registry made.

Shares to be registered on registry de novo under this Act.

XXXIV. And be it further enacted, That whenever any ship or vessel which had been registered before the said thirty-first day of *December* one thousand eight hundred and twenty-three, and shall not have been registered *de novo* since that day, and before the commencement of this Act shall be registered *de novo*, the number of such shares held by each owner shall be registered as far as the same be practicable, and to that intent the owner or owners who shall take and subscribe the oath required by this Act before registry be made, shall produce the bills of sale or other titles of themselves and of the other owners, in order that the number of such shares held by each of them may be ascertained and registered accordingly; and if the registry of such ship or vessel then in force shall be the first registry, and the shares of any of the owners shall remain the same as they were at the time of such registry, and the owner or owners, or any one of them, who shall attend to take and subscribe the oath required by this Act before registry be made, shall be the

same as was or were the owner or owners, or one of them, who took and subscribed such oath before such first registry was made, such original owner or owners instead of producing the bills of sale, shall declare upon oath, to the best of his or their knowledge and belief, the number of such shares held by him or them, or by any other original owner or owners, whose proportionate property in such ship or vessel shall have remained unchanged: Provided always, that if at the time of such registry *de novo* such owner or owners shall make oath that he and they, and each of them, are unable to produce the bill or bills of sale, or to give any certain account or proof of the share or shares of the other previous owners, or some or any one of them, it shall be lawful for the collector and comptroller to register such ship or vessel without requiring the share or shares of such owner or owners to be declared and specified.

If shares of owners cannot be ascertained, registry for that time may be made without stating them.

XXXV. Provided also, and be it further enacted, That from and after the commencement of this Act, or from and after the the first arrival and entry of any ship or vessel, after such commencement, at the port to which she belongs, or at any other port which shall be in the same part of the united kingdom, or in the same colony, plantation, island, or territory as the said port shall be in, no certificate of registry shall be in force, except such as shall be granted under the authority of this Act, or which shall have been granted under the authority of an Act passed in the fourth year of the reign of His present Majesty, intituled, *An Act for the registering of Vessels*, and in which the share or shares hereinbefore described, held by each owner shall be set forth, unless it shall be certified thereon by the collector and comptroller of the port to which such ship or vessel belong, that farther time has been granted by the commissioners of His Majesty's customs for ascertaining and registering the number or numbers of such shares as cannot then be ascertained.

Shares must be registered within a certain time;

4 Geo. 4. c. 41.

unless commissioners give further time.

XXXVI. And be it further enacted, That upon the first registry in compliance with this Act, of any ship or vessel which had been before registered, no stamp duty shall be charged upon the bond therein required to be given; and if the certificate of such former registry then delivered up to be cancelled, shall have a *Mediterranean* pass attached thereto, no stamp duty shall be charged on account of the new *Mediterranean* pass which shall be obtained in lieu of the one so delivered up and cancelled.

No stamp duty on first registry.

XXXVII. And be it further enacted, That no bill of sale or other instrument in writing, shall be valid and effectual to pass property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing, shall have been produced to the collector and comptroller of the port at which such ship or vessel is registered, or

Bills of sale noteffectual until produced to officers of customs, and entered

to

to the collector and comptroller of any other port at which she is about to be registered *de novo*, as the case may be, nor until such collector and comptroller respectively shall have entered in the book of registry, or in the book of intended registry* of such ship or vessel, as the case may be, (and which they are respectively hereby required to do upon the production of the bill of sale, or other instrument for that purpose) the name, residence and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale, or other instrument, and of the production of it; and further, if such ship or vessel is not about to be registered *de novo*, the collector and comptroller of the port where such ship is registered shall and they are hereby required to indorse the aforesaid particulars of such bill of sale, or other instrument, on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; *videlicet*,

in the book of registry or of intended registry.

Form of indorsement.

'Custom House [*port and date*; *name, residence and description of vendor or mortgagor*] has transferred by [*bill of sale or other instrument*] dated [*date*; *number of shares*] to [*name, residence and description of purchaser or mortgagee.*]

'*A. B.* Collector.

'*C. D.* Comptroller.'

Notice to commissioners.

And forthwith to give notice thereof to the commissioners of customs; and in case the collector and comptroller shall be desired so to do, and the bill of sale or other instrument, shall be produced to them for that purpose, then the said collector and comptroller are hereby required to certify, by indorsement, upon the said bill of sale or other instrument, that the particulars beforementioned have been so entered in the book of registry, and indorsed upon the certificate of registry as aforesaid.

Entry of bill of sale to be valid, except in certain cases.

XXXVIII. And be it further enacted, That when and so soon as the particulars of any bill of sale or other instrument, by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument, shall be valid and effectual to pass the property thereby intended to be transferred, as against all and every person and persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers,

* By 7th Geo. 4. c. 48. s. 26. it is enacted, "That such entry in the book "of intended registry, shall not be made until all the requisites of law for the "immediate registry of the ship or vessel in such book have been complied "with; nor shall such entry be valid or certified on the bill of sale until the "registry *de novo* of the ship or vessel shall have been duly made, and the "certificate thereof granted."

purchasers and mortgagees who shall first procure the indorsement, to be made upon the certificate of registry of such ship or vessel in manner hereinafter mentioned.

When a bill of sale has been entered for any shares, 30 days shall be allowed for indorsing the certificate of registry, before any other bill of sale for the same shall be entered.

XXXIX. And be it further enacted, That when and after the particulars of any bill of sale, or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale, or instrument purporting to be a transfer by the same vendor or mortgagor, or vendors or mortgagors, of the same ship or vessel, share or shares thereof, to any other person or persons, unless thirty days shall elapse from the day on which the particulars of the former bill of sale, or other instrument, were entered in the book of registry; or in case the ship or vessel was absent from the port to which she belonged, at the time when the particulars of such former bill of sale or other instrument, were entered in the book of registry, then unless thirty days shall have elapsed from the day on which the ship or vessel arrived at the port to which the same belonged; and in case the particulars of two or more such bills of sale, or other instruments as aforesaid, shall at any time have been entered in the book of registry of the said ship or vessel, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale or other instrument as aforesaid, unless thirty days shall in like manner have elapsed from the day on which the particulars of the last of such bills of sale or other instrument were entered in the books of registry, or from the day on which the ship or vessel arrived at the port to which she belonged, in case of her absence as aforesaid; and in every case where there shall at any time happen to be two or more transfers by the same owner or owners of the same property in any ship or vessel entered in the book of registry as aforesaid, the collector and comptroller are hereby required to indorse upon the certificate of registry of such ship or vessel, the particulars of that bill of sale or other instrument under which the person or persons claims or claim property, who shall produce the certificate of registry for that purpose within thirty days next after the entry of his said bill of sale or other instrument in the book of registry as aforesaid, or within thirty days next after the return of the said ship or vessel to the port to which she belongs, in case of her absence at the time of such entry as aforesaid; and in case no person or persons shall produce the certificate of registry within either of the said spaces of thirty days, then it shall be lawful for the collector and comptroller, and they are hereby required, to indorse upon the certificate of registry the particulars of the bill of sale or other instrument to such person or persons as shall first produce the certificate of registry for that purpose, it being the true intent and meaning of this Act that the several purchasers and

and mortgagees of such ship or vessel, share or shares thereof, when more than one appear to claim the same property, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which such property was transferred to them were entered in the book of registry as aforesaid, but according to the time when the indorsement is made upon the certificate of registry as aforesaid: Provided always, That if the certificate of registry shall be lost or mislaid, or shall be detained by any person whatever, so that the indorsement cannot in due time be made thereon, and proof thereof shall be made by the purchaser or mortgagee, or his known agent, to the satisfaction of the commissioners of His Majesty's customs, it shall be lawful for the said commissioners to grant such further time as to them shall appear necessary for the recovery of the certificate of registry, or for the registry *de novo* of the said ship or vessel under the provisions of this Act, and thereupon the collector and comptroller shall make a memorandum in the book of registers of the further time so granted, and during such time no other bill of sale shall be entered for the transfer of the same ship or vessel, or the same share or shares thereof.

Provision in case certificate be mislaid.

XL. And be it further enacted, That if the certificate of registry of such ship or vessel shall be produced to the collector and comptroller of any port where she may then be, after any such bill of sale shall have been recorded at the port to which she belongs, together with such bill of sale, containing a notification of such record, signed by the collector and comptroller of such port as before directed, it shall be lawful for the collector and comptroller of such other port, to indorse on such certificate of registry (being required so to do), the transfer mentioned in such bill of sale, and such collector and comptroller shall give notice thereof to the collector and comptroller of the port to which such ship or vessel belongs, who shall record the same in like manner as if they had made such indorsement themselves, but inserting the name of the port at which such indorsement was made: Provided always, That the collector and comptroller of such other port shall first give notice to the collector and comptroller of the port to which such ship or vessel belongs, of such requisition made to them, to indorse the certificate of registry, and the collector and comptroller of the port to which such ship or vessel belongs, shall thereupon send information to the collector and comptroller of such other port, whether any and what other bill or bills of sale have been recorded in the book of the registry of such ship or vessel; and the collector and comptroller of such other port, having such information, shall proceed in manner directed by this Act in all respects to the indorsing of the certificate of registry, as they would do if such port were the port to which such vessel belonged.

Bills of sale may be produced after entry at other ports than those to which vessels belong, and transfers indorsed on certificate of registry.

Previous notice to be given to officers at the port of registry.

If upon registry de novo any bill of sale shall not have been recorded, the same shall then be produced.

XLI. And be it further enacted, That if it shall become necessary to register any ship or vessel *de novo*, and any share or shares of such ship or vessel shall have been sold since she was last registered, and the transfer of such share or shares shall not have been recorded and indorsed in manner hereinbefore directed, the bill of sale thereof shall be produced to the collector and comptroller of His Majesty's customs, who are to make registry of such ship or vessel, otherwise such sale shall not be noticed in such registry *de novo*, except as hereinafter excepted: Provided always, That upon the future production of such bill of sale, and of the existing certificate of registry, such transfer shall and may be recorded and indorsed, as well after such registry *de novo* as before.

Bill of sale, previous to registry, may afterwards be recorded.

Upon change of property, registry de novo may be granted if desired, although not required by law.

XLII. And be it further enacted, That if upon any change of property in any ship or vessel, the owner or owners shall desire to have the same registered *de novo*, although not required by this Act, and the owner or proper number of owners shall attend at the custom house at the port to which such ship or vessel belongs for that purpose, it shall be lawful for the collector and comptroller of His Majesty's customs at such port, to make registry *de novo* of such ship or vessel at the same port, and to grant a certificate thereof, the several requisites hereinbefore in this Act mentioned and directed being first duly observed and complied with.

Copies of oaths and extracts from books of registry admitted in evidence.

XLIII. And whereas great inconvenience hath arisen from the registering officers being served with subpœnas requiring them to bring with them and produce, on trials in courts of law relative to the ownery of vessels, or otherwise, the oaths or affidavits required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom: And whereas it would tend much to the dispatch of business if the attendance of such registering officers with the same upon such trials were dispensed with; be it therefore enacted, That the collector and comptroller of His Majesty's customs at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever produce, and exhibit for his, her or their inspection and examination, any oath or affidavit taken or sworn by any such owners or owners, proprietor or proprietors, and also any register or entry in any book or books of registry required by this Act to be made or kept relative to any ship or vessel, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her or them, to take a copy or copies, or an extract or extracts thereof respectively; and that the copy or copies of any such oath or affidavit, register or entry, shall, upon being proved to be a true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original

original or originals, and without the testimony or attendance of any collector or comptroller, or other person or persons acting for them respectively, in all cases as fully and to all intents and purposes as such original or originals, if produced by any collector or collectors, comptroller or comptrollers, or other person or persons acting for them, could or might legally be admitted or received in evidence.

Vessels or shares sold in the absence of owners without formal powers.

XLIV. And be it further enacted, That if any ship or vessel, or the share or shares of any owner thereof who may be out of the kingdom, shall be sold in his absence by his known agent or correspondent, under his directions either expressed or implied, and acting for his interest in that behalf, and such agent or correspondent who shall have executed a bill of sale to the purchaser of the whole of such ship or vessel, or of any share or shares thereof, shall not have received a legal power to execute the same, it shall be lawful for the commissioners of His Majesty's customs, upon application made to them, and proof to their satisfaction of the fair dealings of the parties, to permit such transfer to be registered, if registry *de novo* be necessary, or to be recorded and indorsed, as the case may be, in manner directed by this Act, as if such legal power had been produced; and if it shall happen that any bill of sale cannot be produced, or if, by reason of distance of time, or the absence or death of parties concerned, it cannot be proved that a bill of sale for any share or shares in any ship or vessel had been executed, and registry *de novo* of such ship or vessel shall have become necessary, it shall be lawful for the commissioners of His Majesty's customs, upon proof to their satisfaction of the fair dealing of the parties, to permit such ship or vessel to be registered *de novo*, in like manner as if a bill of sale for the transfer of such share or shares had been produced: Provided always, that in any of the cases herein mentioned, good and sufficient security shall be given to produce a legal power or bill of sale within a reasonable time, or to abide the future claims of the absent owner, his heirs and successors, as the case may be; and at the future request of the party whose property has been so transferred, without the production of a bill of sale from him or from his lawful attorney, such bond shall be available for the protection of his interest, in addition to any powers or rights which he may have in law or equity against the ship or vessel, or against the parties concerned, until he shall have received full indemnity for any loss or injury sustained by him.

Commissioners may permit record of such sales or registery de novo as the case may require; and in other cases where bills of sale cannot be produced;

Security being given to produce legal powers, or abide future claims.

Transfer by way of mortgage.

XLV. And be it further enacted, That when any transfer of any ship or vessel, or of any share or shares thereof, shall be made only as a security for the payment of a debt or debts, either by way of mortgage, or of assignment to a trustee or trustees for the purpose of selling the same for the payment

payment of any debt or debts, then and in every such case the collector and comptroller of the port where the ship or vessel is registered shall in the entry in the book of registry, and also in the indorsement on the certificate of registry, in manner hereinbefore directed, state and express that such transfer, was made only as a security for the payment of a debt or debts, or by way of mortgage, or to that effect; and the person or persons to whom such transfer shall be made, or any other person or persons claiming under him or them as a mortgagee or mortgagees, or a trustee or trustees only, shall not by reason thereof be deemed to be the owner or owners of such ship or vessel, share or shares thereof; nor shall the person or persons making such transfer be deemed by reason thereof to have ceased to be an owner or owners of such ship or vessel, any more than if no such transfer had been made, except so far as may be necessary for the purpose of rendering the ship or vessel, share or shares so transferred, available by sale or otherwise for the payment of the debt or debts for securing the payment of which such transfer shall have been made.

Mortgagee not to be deemed an owner.

Transfers of ships for security of debts being registered, rights of mortgagee not affected by any Act of bankruptcy of mortgagor, &c.

XLVI. And be it further enacted, That when any transfer of any ship or vessel, or of any share or shares thereof, shall have been made as a security for the payment of any debt or debts, either by way of mortgage or of assignment as aforesaid, and such transfer shall have been duly registered according to the provisions of this Act, the right or interest of the mortgagee or other assignee as aforesaid shall not be in any manner affected by any act or acts of bankruptcy committed by such mortgagor or assignor, mortgagors or assignors, after the time when such mortgage or assignment shall have been so registered as aforesaid, notwithstanding such mortgagor or assignor, mortgagors or assignors, at the time he or they shall so become bankrupt as aforesaid, shall have in his or their possession, order and disposition, and shall be the reputed owner or owners of the said ship or vessel, or the share or shares thereof, so by him or them mortgaged or assigned as aforesaid, but that such mortgage or assignment shall take place of and be preferred to any right, claim or interest which may belong to the assignee or assignees of such bankrupt or bankrupts in such ship or vessel, share or shares thereof; any law or statute to the contrary thereof notwithstanding.

Commissioners in Scotland, &c. to transmit copies of certificates to commissioners in England.

XLVII. And be it also further enacted, That the commissioners of His Majesty customs in *Scotland* and *Ireland* respectively shall transmit, at the end of every month in each year, to the commissioners of His Majesty's customs in *England*, true and exact copies of all such certificates as shall be granted by them, or by any officer or officers within the limits of their commission, in pursuance of this Act.

XLVIII. And be it further enacted, That it shall and may be lawful for any governor, lieutenant governor, or commander in chief of any of His Majesty's colonies, plantations, islands, or territories, and they are hereby respectively authorized and required, if any suit, information, libel, or other prosecution or proceeding of any nature or kind whatever shall have been commenced, or shall hereafter be commenced in any court whatever in any of the said colonies, plantations, islands, or territories respectively, touching the force and effect of any register granted to any ship or vessel, upon a representation made to any such governor, lieutenant governor, or commander in chief, to cause all proceedings thereon to be stayed, if he shall see just cause so to do, until His Majesty's pleasure shall be known and certified to him by His Majesty, by and with the advice of His Majesty's privy council; and such governor, lieutenant governor, or commander in chief, is hereby required to transmit to one of His Majesty's principal secretaries of state, to be laid before His Majesty in council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be stayed, and such documents (properly verified) as he may judge necessary for the information of His Majesty.

Governors of colonies, &c. may cause proceedings in suits to be stayed.

XLIX. And be it further enacted, That if any person or persons shall falsely make oath to any of the matters hereinbefore required to be so verified, such person or persons shall suffer the like pains and penalties as are incurred by persons committing wilful and corrupt perjury; and that if any person or persons shall counterfeit, erase, alter, or falsify any certificate or other instrument in writing, required or directed to be obtained, granted, or produced by this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, or falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence forfeit the sum of five hundred pounds.

Punishing persons making false oaths; or falsifying any document.

L. And be it further enacted, That all the penalties and forfeitures inflicted and incurred by this Act shall and may be sued for, prosecuted, and recovered in such courts, and be disposed of in such manner, and by such ways, means, and methods, as any penalties or forfeitures inflicted, or which may be incurred for any offences committed against the laws of customs, may now legally be sued for, prosecuted, recovered and disposed of; and that the officer or officers concerned in seizures or prosecutions under this Act shall be entitled to and receive the same share of the produce arising from such seizures, as in the case of seizures for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty for any offence against this Act, as any officer or officers is or are now by any law or regulation entitled to upon prosecutions for pecuniary penalties.

How penalties are to be recovered, and officers shares.

Act may be altered, varied, or repealed this session. s. 51.

N° VIII.

6 *Geo.* IV. *c.* 109.

AN ACT for the encouragement of *British* Shipping and Navigation.

6 Geo. 4. c. 105.

WHEREAS an Act was passed in the present session of Parliament, intituled *An Act to repeal the several Laws relating to the Customs*, in which it is declared, that the laws of the customs have become intricate by reason of the great number of Acts relating thereto which have been passed through a long series of years, and that it is therefore highly expedient for the interest of commerce and the ends of justice, and also for affording convenience and facility to all persons who may be subject to the operation of those laws, or who may be authorized to act in the execution thereof, that all the statutes now in force relating to the customs should be repealed, and that the purposes for which they have from time to time been made should be secured by new enactments, exhibiting more perspicuously and compendiously the various provisions contained in them: And whereas the laws relating to the encouragement of British navigation will thereby be repealed, and it is expedient to make provisions in lieu thereof, for the due encouragement of British shipping and British seamen, after such repeal shall have effect; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the fifth day of *January* one thousand eight hundred and twenty-six, this Act shall come into and be and continue in full force and operation, and shall constitute and be the law of navigation of the British empire.

Commencement of Act.

Europe, enumerated goods in British ships, or ships of place, or ships of produce.

II. And be it further enacted, That the several sorts of goods hereinafter enumerated, being the produce of *Europe*; (that is to say), masts, timber, boards, salt, pitch, tar, tallow, rosin, hemp, flax, currants, raisins, figs, prunes, olive oil, corn or grain, pot ashes, wine, sugar, vinegar, brandy and tobacco, shall not be imported into the united kingdom, to be used therein, except in British ships, or in ships of the country of which the goods are the produce, or in ships of the country from which the goods are imported.

Goods of Asia, Africa, or America, may not be imported from Eu-

III. And be it further enacted, That goods, the produce of *Asia*, *Africa* or *America*, shall not be imported from *Europe* into the united kingdom, to be used therein, except the goods hereinafter mentioned; (that is to say),

Goods, the produce of places in *Asia* or *Africa* within the Straits of *Gibraltar*, or of the dominions of the emperor of *Morocco*,

Morocco, imported from places in *Europe* within the Straits of *Gibraltar*: rope, except in certain cases.

Goods, the produce of places within the limits of the *East India* Company's charter, which (having been imported into *Gibraltar* or *Malta* in British ships), may be imported from *Gibraltar* or *Malta*:

Goods taken by way of reprisal by British ships:

Bullion, diamonds, pearls, rubies, emeralds, and other jewels or precious stones.

IV. And be it further enacted, That goods, the produce of *Asia*, *Africa* or *America*, shall not be imported into the united kingdom, to be used therein, in foreign ships, unless they be the ships of the country in *Asia*, *Africa* or *America*, of which the goods are the produce, and from which they are imported, except the goods hereinafter mentioned; (that is to say), Goods of Asia, Africa, or America, may not be imported in foreign ships, except in certain cases.

Goods, the produce of the dominions of the Grand Seignor, in *Asia* or *Africa*, which may be imported from his dominions in *Europe*, in ships of his dominions:

Raw silk and mohair yarn, the produce of *Asia*, which may be imported from the dominions of the Grand Seignior in the *Levant* seas, in ships of his dominions:

Bullion.

V. Provided always, and be it further enacted, That all manufactured goods shall be deemed to be the produce of the country of which they are the manufacture. Manufacture deemed produce.

VI. And be it further enacted, That no goods shall be imported into the united kingdom from the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, except in British ships. From Guernsey, &c.

VII. And be it further enacted, That no goods shall be exported from the united kingdom to any British possession in *Asia*, *Africa* or *America*, nor to the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, except in British ships. Exports to Asia, &c. and to Guernsey, &c.

VIII. And be it further enacted, That no goods shall be carried coastwise, from one part of the united kingdom to another, except in British ships. Coastwise.

IX. And be it further enacted, That no goods shall be carried from any of the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, to any other of such islands; nor from one part of any such islands to another part of the same island, except in British ships. Between Guernsey, Jersey, &c.

X. And be it further enacted, That no goods shall be carried from any British possession in *Asia*, *Africa* or *America*, to any other of such possessions, nor from one part of any such possessions to another part of the same, except in British ships. Between British possessions in Asia, &c.

XI. And be it further enacted, That no goods shall be imported into any British possession in *Asia*, *Africa* or *America*, in any foreign ships, unless they be ships of the country of which Imports, British possessions in Asia, &c.

which the goods are the produce, and from which the goods are imported *.

No ship British, unless registered, and navigated as such:

XII. And be it further enacted, That no ship shall be admitted to be a British ship unless duly registered and navigated as such; and that every British registered ship, (so long as the registry of such ship shall be in force, or the certificate of such registry retained for the use of such ship) shall be navigated during the whole of every voyage (whether with a cargo or in ballast), in every part of the world by a master who is a British subject, and by a crew, whereof three-fourths at least are British seamen †, and if such ship be employed in a coasting voyage from one part of the united kingdom to another, or in a voyage between the united kingdom and the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, or from one of the said islands to another of them, or from one part of either of them to another of the same, or be employed in fishing on the coasts of the united kingdom, or of any of the said islands, then the whole of the crew shall be British seamen.

But vessels under 15 tons burthen admitted in navigation upon rivers, &c. although not registered. Under 30 tons for Newfoundland fishery.

XIII. Provided always, and be it further enacted, That all British-built boats or vessels under fifteen tons burthen, wholly owned and navigated by British subjects, although not registered as British ships, shall be admitted to be British vessels, in all navigation in the rivers and upon the coasts of the united kingdom, or of the British possessions abroad, and not proceeding over sea, except within the limits of the respective colonial governments within which the managing owners of such vessels respectively reside; and that all British-built boats or vessels wholly owned and navigated by British subjects, not exceeding the burthen of thirty tons, and not having a whole or a fixed deck, and being employed solely in fishing on the banks and shores of *Newfoundland*, and of the parts adjacent, or on the banks and shores of the provinces of *Canada*, *Nova Scotia* or *New Brunswick*, adjacent to the Gulf of *St. Lawrence*, or on the north of *Cape Canso*, or of the islands within the same, or in trading coastwise within the said limits, shall be admitted to be British boats or vessels, although not registered, so long as such boats or vessels shall be solely so employed.

Honduras ships to be as British, in trade with united kingdom.

XIV. Provided also, and be it further enacted, That all ships built in the British settlements at *Honduras*, and owned and navigated as British ships, shall be entitled to the privileges of British registered ships in all direct trade between the united kingdom

* By 6th Geo. 4. c. 110. s. 3. Ships registered at *Malta*, *Gibraltar*, or *Heligoland*, shall not be entitled to the privileges of British ships in any trade between the united kingdom, and any of the colonies, plantations, islands or territories in *America*, to His Majesty belonging.

† But see 6th Geo. 4. c. 110. s. 8.

kingdom and the said settlements; provided the master shall produce a certificate under the hand of the superintendent of those settlements, that satisfactory proof has been made before him that such ship (describing the same) was built in the said settlements, and is wholly owned by British subjects; provided also, that the time of the clearance of such ship from the said settlements for every voyage shall be endorsed upon such certificate by such superintendent.

Ship of any foreign country to be of the built of, or prize to such country; or British-built, and owned and navigated by subjects of the country.

XV. And be it further enacted, That no ship shall be admitted to be a ship of any particular country, unless she be of the built of such country*; or have been made prize of war to such country; or have been forfeited to such country under any law of the same, made for the prevention of the slave trade, and condemned as such prize or forfeiture by a competent court of such country; or be British built (not having been a prize of war from British subjects to any other foreign country); nor unless she be navigated by a master who is a subject of such foreign country, and by a crew of whom three-fourths at least are subjects of such country; nor unless she be wholly owned by subjects of such country usually residing therein, or under the dominion thereof: Provided always, that the country of every ship shall be deemed to include all places which are under the same dominion as the place to which such ship belongs.

Master and seamen not British, unless natural-born, or naturalized, or denizens, or subjects by conquest or cession, or having served in H. M. ships of war.

XVI. And be it further enacted, That no person shall be qualified to be a master of a British ship, or to be a British seaman within the meaning of this Act, except the natural-born subjects of His Majesty, or persons naturalized by any Act of Parliament, or made denizens by letters of denization; or except persons who have become British subjects by virtue of conquest or cession of some newly acquired country, and who shall have taken the oath of allegiance to His Majesty, or the oath of fidelity required by the treaty of capitulation by which such newly acquired country came into His Majesty's possessions; or persons who shall have served on board any of His Majesty's ships of war in time of war for the space of three years: Provided always, that the natives of places within the limits of the *East India* company's charter, although under British dominion, shall not, upon the ground of being such natives, be deemed to be British seamen: Provided always, that every ship (except ships required to be wholly navigated by British seamen) which shall be navigated by one British seaman, if a British ship, or one seaman of the country of such ship, if

One proper seaman to twenty tons sufficient.

* A *Danish* ship wrecked on the coast of *Russia*, and damaged and repaired in *Russia*, at an expense exceeding two-thirds of her value, was held by Lord *Ellenborough* not to be deemed as *Russian* built, within the old Navigation Act; although it was said, that she was so considered in the law of *Russia*. *Redhead and another* v. *Cater*, 4 Campbell, 188.

if a foreign ship, for every twenty tons of the burthen of such ship, shall be deemed to be duly navigated, although the number of other seamen shall exceed one-fourth of the whole crew.

Foreigners having served two years on board H.M. ship during war.

XVII. Provided always, and be it further enacted, That it shall be lawful for His Majesty, by his royal proclamation during war, to declare that foreigners, having served two years on board any of His Majesty's ships of war in time of such war, shall be British seamen within the meaning of this Act.

British ship not to depart British port unless duly navigated, &c.

XVIII. And be it further enacted, That no British registered ship shall be suffered to depart any port in the united kingdom, or any British possession in any part of the world (whether with a cargo or in ballast), unless duly navigated: Provided always, That any British ships, trading between places in America, may be navigated by British negroes; and that ships trading eastward of the *Cape of Good Hope*, within the limits of the *East India* company's charter, may be navigated by Lascars, or other natives of countries within those limits.

If excess of foreign seamen, penalty 10 *l.* for each; except British seamen cannot be procured in foreign ports, or in India; or proportion destroyed unavoidably; and certificate produced, or proof made.

XIX. And be it further enacted, That if any British registered ship shall at any time have, as part of the crew in any part of the world, any foreign seaman not allowed by law, the master or owners of such ship shall for every such foreign seaman forfeit the sum of ten pounds: Provided always, That if a due proportion of British seamen cannot be procured in any foreign port, or in any place within the limits of the *East India* company's charter, for the navigation of any British ship; or if such proportion be destroyed during the voyage by any unavoidable circumstance, and the master of such ship shall produce a certificate of such facts under the hand of any British consul, or to two known British merchants, if there be no consul at the place where such facts can be ascertained, or from the British governor of any place within the limits of the *East India* company's charter; or in the want of such certificate, shall make proof of the truth of such facts to the satisfaction of the collector and comptroller of the customs of any British port, or of any person authorized in any other part of the world to inquire into the navigation of such ship, the same shall be deemed to be duly navigated.

Proportion of seamen may be altered by proclamation.

XX. And be it further enacted, That if His Majesty shall, at any time by his royal proclamation, declare that the proportion of British seamen necessary to the due navigation of British ships shall be less than the proportion required by this Act, every British ship navigated with the proportion of British seamen required by such proclamation shall be deemed to be duly navigated, so long as such proclamation shall remain in force.

Goods prohibited only by navigation law

XXI. Provided always, and be it further enacted, That goods of any sort or the produce of any place, not otherwise prohibited than by the law of navigation hereinbefore contained, may be imported into the united kingdom from any place in a British ship,

ship, and from any place not being a British possession in a foreign ship of any country, and however navigated, to be warehoused for exportation only, under the provisions of any law in force for the time being, made for the warehousing of goods without payment of duty upon the first entry thereof. may be imported for exportation.

XXII. And be it further enacted, That if any goods be imported, exported, or carried coastwise, contrary to the law of navigation hereinbefore contained, all such goods shall be forfeited, and the master of such ship shall forfeit the sum of one hundred pounds. Forfeiture and penalty.

Act may be altered or repealed this session. s. 23.

Extract from 7 Geo. IV. c. 48.

Navigation.

XXI. And whereas another Act was passed in the last session of Parliament, intituled, *An Act for the Encouragement of British Shipping and Navigation*; and it is expedient to amend the same in manner hereinbefore provided; be it therefore enacted, That all goods, the produce of places in the interior of *Asia* or *Africa*, which shall be brought to any place in *Europe* within the Straits of *Gibraltar*, through places in *Asia* or *Africa* which are within those Straits, shall be deemed to be the produce of such last mentioned places within the meaning of the said Act. Goods of Asia or Africa within Straits of Gibraltar.

XXII. And whereas by an Act passed in the fourth year of the reign of His present Majesty, for consolidating and amending the laws then in force with respect to trade from and to places within the limits of the charter of the *East India* company, particular provision is made with respect to the number and country of the seamen by whom British ships engaged in such trade may in certain cases be navigated; be it therefore enacted, That any British ship navigated in the manner permitted by the said Act in any of the cases therein mentioned, shall be deemed to be duly navigated as British ships; any thing in the beforementioned Act for the encouragement of British shipping and navigation to the contrary notwithstanding. Lascars and foreigners navigating East India ships. 4 G. 4. c. 80. s. 21, 22.

XXIII. And whereas by an Act passed in the thirty-fifth year of the reign of his late Majesty King *George* the Third, intituled, *An Act for further encouraging and regulating the Southern Whale Fisheries*, certain foreigners were permitted to be employed as masters or seamen in navigating ships employed in such fisheries: And whereas the said Act will from and after the fifth day of *July* next be repealed; and it is expedient to continue such privilege to persons who have been actually so employed; be it therefore enacted, That it shall be lawful for any person who shall have been actually so employed under the authority of the said Act, to go before the collector and comptroller of the customs at the port from whence the ship in which he last so served Foreigners navigating ships in southern whale fishery.

shall have cleared out for the voyage on which he was employed in the same, and make proof of such service to the satisfaction of such collector and comptroller, and thereupon such collector and comptroller shall enrol the name of such person, and shall give to him a certificate of such proof, and such person producing such certificate shall at all times thereafter be deemed to hold the qualification of a British seaman for the purpose of navigating any ship employed in the southern whale fisheries; any thing in the law of navigation to the contrary notwithstanding.

Jurisdiction under Act 6 G. 4. c. 108. extended to navigation law.

XXIV. And be it further enacted, That all penalties and forfeitures incurred under the said Act for the encouragement of British shipping and navigation, shall be sued for, prosecuted, recovered, and disposed of, or shall be mitigated or restored, in like manner as any penalty or forfeiture can be sued for, prosecuted, recovered, and disposed of, or may be mitigated or restored, under the before mentioned Act passed in the last session of Parliament for the prevention of smuggling.

N° IX.

6 *Geo.* IV. *c.* 125.

AN ACT for the Amendment of the Law respecting Pilots and Pilotage; and also for the better preservation of Floating Lights, Buoys, and Beacons.

WHEREAS Ships and vessels have frequently been wrecked, and many lives and much property have been lost, from the ignorance or misconduct of persons taking charge of such ships and vessels as pilots: And whereas the master, wardens and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity, and of *Saint Clement* in the parish of *Deptford Strond* in the county of *Kent*, commonly called "The Corporation of Trinity House of *Deptford Strond*," have, as well by usage for more than three centuries, as by grants from the Crown, been empowered to appoint pilots, loadsmen or guides, to conduct ships and vessels into and out of and upon the river of *Thames*, through the *North Channel*, to or by *Orfordness*, and round the *Long Sand Head*, or through the *Queen's Channel*, the *South Channel*, or other channels, into the *Downs*, and from and by *Orfordness* and up the *North Channel*, and up the rivers *Thames* and *Medway*, and the several creeks and channels, belonging or running into the same, and to make such orders and constitutions as should be needful for the wholesome government of seafaring men, and maintenance and increase of navigation, and of all seafaring men within the said river of *Thames*; in pursuance of which powers the said corporation have from time to time appointed a sufficient number of pilots for the purposes before-mentioned,

before-mentioned, and made orders for the better regulation and government of the same: And whereas there hath been time out of mind, and now is, a society or fellowship of pilots of the Trinity house of *Dover*, *Deal* and the *Isle of Thanet*, who have had the pilotage and loadmanage of all ships from the said places up the rivers *Thames* and *Medway*, which said society or fellowship have been confirmed by various Acts of Parliament, for regulating the pilots of the society or fellowship of pilots of *Dover*, *Deal*, and the *Isle of Thanet*, commonly called *Cinque Port Pilots*: And whereas by certain Acts of Parliament, and more particularly by an Act passed in the fifty-second year of the reign of his late Majesty king *George* the Third, intituled, *An Act for the more effectual Regulation of Pilots, and of the Pilotage of Ships and Vessels on the Coast of* England, certain additional powers and authorities were vested as well in the said Corporation of Trinity house of *Deptford Strond*, and the said society or fellowship of pilots of *Dover*, *Deal* and the *Isle of Thanet*, commonly called *Cinque Port Pilots*, as also in the corporation of the Trinity House of the ports of *Hull* and *Newcastle* respectively: And whereas a certain other Act of Parliament was passed in the fifty-fifth year of the reign of his said late Majesty king *George* the Third, intituled, *An Act to relieve certain Foreign Vessels resorting to the Port of* London, *in respect of Pilotage, and to regulate the mode of payment of Pilotage on Foreign Vessels in the said Port:* And whereas the provisions of the said Acts have been found inadequate and insufficient, and it is therefore expedient that the same should be repealed (except as hereinafter provided), and that the several provisions therein contained respecting pilots and pilotage should be improved and amended, and consolidated in one law: May it therefore please Your Majesty, that it may be enacted, and be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said Act passed in the fifty-second year of the reign of his late Majesty, and also the said Act passed in the fifty-fifth year ofthe reign of his said late Majesty, and all and every the clauses, provisions, powers, penalties, forfeitures, matters and things, relating as well to pilots appointed by the said Corporation of Trinity House of *Deptford Strond*, as to pilots of the fellowship of *Dover*, *Deal* and the *Isle of Thanet*, and to the pilotage by and regulation of all such pilots as aforesaid, and also as to the conduct of all persons in matters of pilotage, within the jurisdicton of the said Corporation of Trinity House of *Deptford Strond*, and the liberty of the Cinque Ports, which are contained in any Act or Acts of Parliament heretofore made, shall be and the same are hereby repealed: Provided always, that nothing in this Act contained shall extend or be construed to extend to repeal so much

52 G. 3. c. 39.

55 G. 3. c. 87.

52 G. 3. c. 39. 55 G. 3. c. 87. and all provisions in other Acts relating to pilots and pilotage repealed

But not as to rates and penalties

due or incurred, or Acts done before the operation of the provisions of this Act.

much of the said Acts passed in the fifty-second and fifty-fifth years of the reign of his late Majesty, or either of them, as relates to any rates of pilotage due or to become due, or to any penalty or forfeiture incurred or to be incurred, or any other act, matter or thing done or to be done before the commencement of the operation of the provisions of this Act, in relation to any such matters and things as last aforesaid.

The corporation of Trinity House of Deptford Strond to license pilots to act within certain limits.

II. And be it further enacted, That from and after the passing of this Act, it shall be lawful for the said Corporation of Trinity House of *Deptford Strond*, and they are hereby required, after due examination, to appoint and licence, under their common seal, fit and competent persons duly skilled to act as pilots, for the purpose of conducting all ships and vessels sailing, navigating and passing as well up and down or upon the rivers of *Thames* and *Medway*, and all and every the several channels, creeks and docks thereof or therein, or leading or adjoining thereto, between *Orfordness* and *London Bridge* as also from *London Bridge* to the *Downs*, and from the *Downs* westward as far as the *Isle of Wight*, and in the *English Channel*, from the *Isle of Wight* up to *London Bridge*; and all ships and vessels sailing, navigating and passing as aforesaid (save and except as hereinafter provided), shall be conducted and piloted within the limits aforesaid, by such pilots so to be appointed and licensed, and by no other pilots or persons whomsoever:

Pilots heretofore appointed may act until the 31st January next.

Provided always, that it shall be lawful for all pilots heretofore licenced by the said Corporation of Trinity House of *Deptford Strond*, until the thirty-first day of *January* next after the passing of this Act, and whilst their licences shall respectively continue in force, but no longer, to pilot or conduct any ships or vessels within such limits as such pilots might lawfully have conducted and piloted the same immediately before the passing of this Act; and the licences so heretofore granted to such pilots respectively as aforesaid, shall, unless revoked or suspended, as hereinafter mentioned, continue in force notwithstanding this Act, until the said thirty-first day of *January*, so that such pilots respectively do in all things conform themselves to the provisions of this Act, and the bye-laws, rules, orders and regulations hereinafter directed to remain in force, or to be established under the same.

No person shall be licensed by the corporation, except as herein specified, nor take charge of a ship drawing

III. And be it further enacted, That no person shall be licensed by the said Corporation of Trinity House of *Deptford Strond* as a pilot, who shall not have served as mate for three years on board of, or who shall not have been for one year in the actual command of a square-rigged vessel of not less than eighty tons register tonnage, as to licences for the *North Channel* upwards, and not less than one hundred and fifty tons register tonnage, as to licences for the *North Channel*, *Queen's Channel*, *South Channel*, or other channels downwards, or who shall

shall not have been employed in the pilotage or buoyage service of the said Corporation of Trinity House for seven years, or who shall not have served an apprenticeship of five years to some pilot vessel licensed under the said Act passed in the fifty-second year of the reign of his said late Majesty, or under this Act; and that no person so licensed shall take charge as a pilot of any ship or vessel drawing more than fourteen feet water in the rivers *Thames* or *Medway*, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been after such three years, on re-examination, approved of in that behalf by the said corporation of Trinity House, on pain of forfeiting ten pounds for every such offence, as well by the person acting as such pilot, as also by the master or other person having the command of such ship or vessel, who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid.

more than 14 feet water until he shall have acted three years, and have been then re-examined and again approved.

Penalty as well by the person acting, as by the person in command permitting him.

IV. And be it further enacted, That each and every pilot already licensed by the said Corporation of Trinity House of *Deptford Strond*, or to be licensed by the said corporation under the authority of this Act, (except only such pilots as have been or shall be so licensed by the said corporation upon their receiving certificates of examination by any sub-commissioners of pilotage), as in the said Act of the fifty-second year of the reign of his said late Majesty King *George* the Third, and hereinafter directed in lieu and satisfaction of and for all the ancient and accustomed duties heretofore payable by such pilots to the said corporation, shall from time to time and at all times hereafter pay or cause to be paid to the said corporation, or to such person or persons as they shall appoint to receive the same on their behalf, the sum of three guineas, in the month of *January* yearly; and that each and every pilot so licensed, or to be licensed by the said corporation as aforesaid, as well upon receiving such certificates as aforesaid, as otherwise howsoever, shall also from time to time and at all times, from and after the first day of *July* next, pay or cause to be paid to the said corporation, or to such person or persons and at such places and times as the said corporation shall in that behalf appoint, a certain poundage of sixpence in the pound upon all the pilotage earned by each and every of such pilots, from the said first day of *July* inclusive, on pain of forfeiture for default of any of the payments aforesaid, or for any concealment or fraud therein or relating thereto, double the amount payable, and of being suspended or dismissed from acting as a pilot, at the discretion of the said corporation; which said payments hereby directed to be made as aforesaid shall be carried to and applied to the purposes of the pilots fund of the said corporation hereinafter mentioned.

Pilots to pay annually 3*l.* 3*s.* and 6*d.* in the pound on their earnings;

to be applied to the purposes of the pilots fund.

The Corporation of Trinity House shall appoint sub-commissioners to examine pilots at the requisite ports, and on their certificate of qualification may grant licences.

V. And be it further enacted, That it shall be lawful for the said Corporation of Trinity House of *Deptford Strond*, and they are hereby required to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons, at such ports and places in *England* as they may think requisite (except within the liberty of the Cinque Ports, and all such other ports and places within or for which particular provision shall have been made by any Act or Acts of Parliament, or by any charter or charters for the appointment of pilots), not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called sub-commissioners of pilotage, and shall take the oath in the schedule hereunto annexed, marked (C.), for the faithful discharge of their duty; and such persons so to be appointed shall examine, and they are hereby authorized (so long as their respective deputations or appointments shall not be revoked or superseded by the appointment of other persons in their places) to examine into the qualification of persons to act as pilots for such respective ports and places, and the adjoining coasts specified in their respective deputations or appointments as aforesaid; and it shall be lawful for the said corporation, upon their receiving a satisfactory certificate under the hands of any three of the persons so to be appointed, where the whole number at any port or place shall consist of four or five, and of any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination.

The Trinity Houses of Hull and Newcastle may appoint sub-commissioners to examine pilots, &c. within their jurisdiction. Sub-commissioners already appointed shall continue to act.

VI. Provided always, and be it further enacted, That it shall be lawful for the corporations of the Trinity Houses of the ports of *Hull* and *Newcastle* resspectively, to appoint sub-commissioners of pilotage to examine pilots, and give licences for them to pilot ships and vessels into or out of any ports, harbours, or places within the limits of their respective jurisdictions; any thing in this Act contained to the contrary notwithstanding: Provided always, That such sub-commissioners as have been already appointed, either by the said Corporation of Trinity House of *Deptford Strond*, or by the said corporations of the Trinity Houses of the ports of *Hull* and *Newcastle* respectively, under the authority of any Act or Acts of Parliament heretofore passed, shall continue to act in the same manner as if they were appointed under this Act.

Notice of appointment of pilots by the corpora-

VII. And be it further enacted, That when and as soon as the said Corporation of Trinity House of *Deptford Strond* shall have licensed pilots for any particular port or ports, and the respective coasts near the same as aforesaid, they shall cause notice of such

licences

licences to be published by fixing up such notice in writing at the Trinity house and at the Custom house in *London*, and also at the respective custom houses of the ports for which, and for the coasts near the same, such licences shall be granted, and shall also afterwards cause such notice to be published in the *London Gazette*, and in one or more of the newspapers circulated in that part of the country where the ports shall respectively be situated, which publication in the *London Gazette* shall be good and sufficient evidence of such notice having been given; and from and after a time or times to be limited in the said notice, which shall not in any case, or in relation to any ships or vessels whatever, be less than six weeks from the publication thereof, as aforesaid, and shall be proportionably more at the discretion of the said corporation, in relation to ships and vessels engaged in foreign voyages at the time of such publication, all ships and vessels sailing, navigating, or passing into or out of the said respective ports, or upon the coasts thereof (save and except as hereinafter mentioned) shall be conducted and piloted by such pilots only as shall be so licensed as aforesaid, and by no other pilots or persons whomsoever.

tion of Trinity House of Deptford Strond, to be fixed up at the Trinity House, &c. after which no other pilot or person shall act.

VIII. And be it further enacted, That it shall be lawful for the said Corporation of Trinity House of *Deptford Strond*, and they are hereby authorized and required to establish, vary, and alter from time to time, as circumstances shall render the same necessary, rates of pilotage, in relation to all pilotage performed in any river, port, or place, or upon any coast whatever, by any pilot or pilots already licensed, or who shall be licensed by the said corporation, upon their receiving certificates of examination from sub-commissioners of pilotage as aforesaid, which rates shall be regulated by and proportioned as well to the size and draught of water of the vessels, as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said corporation may think fit to take into consideration in fixing and establishing such rates; of which establishment or alteration of rates of pilotage notice shall be given, by hanging up printed Tables thereof, corrected from time to time as variations therein shall be made at the several custom houses at the ports to which the said rates shall apply; and no greater or less rates, or other reward or emolument for such pilotage, shall under any pretence whatever be demanded, solicited, received, paid, or offered, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting, or receiving, as by the person paying or offering such greater or less rates, reward, or emolument: Provided that ships returning by distress of weather, contrary winds, or on account of accident, into ports in the districts of the *Isle of Wight*, *Plymouth*, and *Falmouth*, shall be subject to pay one-half of the common pilotage in the said ports.

Corporation of Trinity House shall establish rates for pilotage performed by pilots licensed on certificates.

Of which Rates, Tables shall be hung up at the Custom Houses of the respective ports, and no greater or less rates shall be received or paid.

Majority of pilots, or any ship owner, being dissatisfied with the rates, may appeal to privy council.

IX. Provided always, and be it further enacted, That if the major part in number of the pilots who shall be licensed by the said Corporation of Trinity House of *Deptford Strond*, for any particular port or place, in consequence of their receiving certificates of examinations as aforesaid, shall be dissatisfied with the rates so established or altered for such port or place; or in case any owner of any ship or vessel interested in any such rates shall be dissatisfied therewith, it shall be lawful for such parties respectively to appeal to His Majesty, his heirs and successors, in his or their most honourable privy council, and for any committee of such privy council, calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter, and regulate such rates as to them shall appear to be expedient, in case the matter of such appeal shall, in the discretion of the said privy council, or committee thereof, appear to require the making of any order therein.

Licences to be granted for one year, and renewable.

X. And be it further enacted, That all and every the licences to be granted under the authority of this Act, by the said Corporation of Trinity House of *Deptford Strond*, shall be granted in the first instance up to and until the thirty-first day of *January* next ensuing the date thereof, and no longer; and that the same licences, and also all and every the licences heretofore granted by the said Corporation of Trinity House of *Deptford Strond*, and which shall be in force at the time of the passing this Act, shall and may be renewed and confirmed from year to year, up to and until the thirty-first day of *January* in every year, and no longer, at the discretion of the said corporation, such renewal and confirmation to be by indorsement on such licences respectively, signed by the secretary to the said corporation for the time being, or by such other person or persons as shall or may be thereunto authorized by the said corporation.

Corporation of Trinity House may make bye-laws and annex penalties for breach of them.

XI. And be it further enacted, That all persons licensed to act as pilots, or in pilot vessels, by the said Corporation of Trinity House of *Deptford Strond*, by virtue of this Act, shall from time to time and at all times hereafter be subject to the regulations and government of the said corporation, who are hereby authorized and empowered, as well for ensuring the good conduct and constant attendance of such pilots upon their duty, as for enforcing the general purposes of this Act, from time to time to make and frame all such bye-laws, rules, orders, regulations, and ordinances as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage, for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said corporation respectively to annex such reasonable penalties and forfeitures for the breach of such bye-laws, rules, orders, regulations, and ordinances

ordinances when made, as to them shall seem expedient in that behalf; and from time to time to annul, alter, and amend all or any of the existing bye-laws, rules, orders, regulations, and ordinances, and to make such other and new bye-laws, rules, orders, regulations, and ordinances as they shall think proper, so as such bye-laws, rules, orders, regulations, and ordinances be made conformable to the true intent and meaning of this Act, and shall not be repugnant to the laws of this realm: Provided always, That no bye-laws, rules, orders, regulations, or ordinances hereafter to be made by the said corporation, shall have force or effect before they shall have been examined, sanctioned, and approved by the Chief Justice of His Majesty's court of King's Bench, or by the Chief Justice of His Majesty's court of Common Pleas, the sanction and approbation of either of which Chief Justices shall be verified under his hand and seal; and all and every such bye-laws, rules, orders, regulations and ordinances, when so made and confirmed as aforesaid, shall be observed and kept and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this Act *.

Bye laws to be sanctioned by the Chief Justice of the King's Bench or Common Pleas.

XII. And in order that all such bye-laws, rules, orders, regulations, and ordinances may be previously examined by the parties interested therein, be it further enacted, That copies of all such proposed bye-laws, rules, orders, regulations, and ordinances shall be transmitted to His Majesty's privy council, and to the commissioners of customs in *London*, three calendar months before the same shall be submitted to such Chief Justice as aforesaid; and the commissioners of the customs are hereby required, upon the receipt of such copy, to cause the same to be printed and hung up, as soon as the same can be done, in the several custom houses of the principal ports in *Great Britain*, there to be open to the inspection of all persons interested therein at all seasonable times; and notice shall be given in the *Gazette* of such

Proposed bye-laws to be previously transmitted to the privy council and to the commissioners of customs, the latter of whom shall cause printed copies to be hung up at the custom houses.

* In pursuance of which, bye-laws have been made, and have been sanctioned by the Chief Justice of the King's Bench. The following extract from them is here inserted, as being of general interest to the owners and masters of ships: Clause 6th, "It is ordained, That every pilot who shall have taken "charge of any ship from the river *Thames* to the *Downs*, or elsewhere, shall "without any additional compensation in that behalf, wait on board for the "space of three complete days while such ship may be detained at *Gravesend*, "or elsewhere, for want of seamen or by any other casualty, nor shall he at "the end of three complete days be at liberty to quit such ship, or receive "any additional compensation, if she shall be further detained by winds, "weather, or tides, and should the ship be detained beyond three complete "days on any other account, except winds, weather, or tides, the pilot having "the charge thereof, shall nevertheless still (if required so to do) remain in "the charge of her, provided a compensation of six shillings per day be "offered to him in that behalf by the master or owner."

such proposed bye-laws being so hung up for inspection as aforesaid.

Bye-laws confirmed, to be hung up in the custom houses and the Trinity House.

XIII. And be it further enacted, That all such bye-laws, rules, orders, regulations, and ordinances as shall be so made and confirmed as aforesaid, shall be printed, and shall be hung up in some public or conspicuous place in the several custom houses of the ports of *England*, within the limits for which the pilots respectively shall be licensed, and also at the Trinity House in *London*.

The lord warden of the Cinque Ports to license pilots to act within certain limits.

XIV. And be it further enacted, That from and after the passing of this Act, it shall and may be lawful for the lord warden of the Cinque Ports and constable of *Dover Castle*, or his lieutenant for the time being, and they are hereby required to appoint and license fit and competent persons duly skilled as pilots, for the purpose of conducting all ships and vessels sailing, navigating, and passing from or by *Dungeness*, up the rivers *Thames* and *Medway* to *London Bridge* and *Rochester Bridge*, and all and every the several channels, creeks, and docks of the same, and from the south buoy of the *Brake* to the westward, as far as the west end of the *Owers*; and all ships and vessels sailing, navigating, and passing as aforesaid (save and except as hereinafter provided), shall be conducted and piloted within the limits aforesaid, by such pilots so appointed and licensed, and by no other pilots or persons whomsoever: Provided always, That it shall be lawful, after the passing this Act, for any pilot or pilots heretofore licensed by the said lord warden and constable for the time being, or his lieutenant for the time being, to pilot or conduct any ship or vessel within such limits as such pilot or pilots might lawfully have conducted and piloted the same immediately before the passing of this Act; and the licences so heretofore granted to such pilots as aforesaid shall continue in force notwithstanding this Act, so that such pilots do in all things conform themselves to the provisions of this Act, and the rules and regulations hereinafter directed to remain in force or be established under the same.

Existing licences to continue in force.

No person shall take charge of any ship as a Cinque Port pilot, till he has been examined and admitted.

XV. And be it further enacted, That no person shall, from and after the passing of this Act, take charge of any ship or vessel, as a pilot belonging to the society or fellowship of pilots of *Dover*, *Deal*, and the *Isle of Thanet*, commonly called *Cinque Port Pilots*, before he shall be examined by the master and two wardens, or by four wardens of the said society or fellowship for the time being touching his abilities, and shall be approved and admitted into the society or fellowship of the Trinity House of *Dover*, *Deal*, and the *Isle of Thanet*, by the lord warden of the Cinque Ports, and constable of *Dover Castle* for the time being, or his lieutenant for the time being; and if any person shall presume to act as a pilot belonging to the said society or fellowship, without

without having been so examined, approved, and admitted as aforesaid, every such person shall for the first offence forfeit ten pounds, for the second twenty pounds, and for every other offence forty pounds. Penalty.

XVI. And be it further enacted, That no person belonging to the said society or fellowship of pilots of *Dover*, *Deal*, and the *Isle of Thanet*, commonly called *Cinque Port Pilots*, shall, from and after the passing of this Act, be allowed to take charge as a pilot of any ship or vessel drawing more than eleven feet six inches water, until he shall have been licensed and acted as a pilot for three years; or of any ship or vessel drawing more than fourteen feet water, until he shall have been licensed and acted as a pilot for two years more, making five years; or of any ship or vessel drawing more than seventeen feet water, until he shall have been licensed and acted as a pilot two years more, making seven years in the whole; and at the expiration of such period of seven years, such pilot shall be again examined as to his fitness and competency, and if he shall be approved of, and licensed on such examination, shall be authorized and allowed and entitled to take charge of any ships or vessels of any draught of water. Nor of ships drawing more than 11 feet 6 inches, until he shall have been licensed and have acted three years; 14 feet, five years; and 17 feet, seven years.

XVII. And be it further enacted, That the master, and such wardens of the said society or fellowship of pilots of the Trinity House of *Dover*, *Deal*, and the *Isle of Thanet*, as shall be appointed from time to time to examine into the skill and ability of any person on his being first admitted as a pilot into the said society or fellowship, or after he shall have been licensed and served for seven years, shall take the oath marked (B.) in the Schedule hereunto annexed, to be administered unto him or them respectively by the registrar of the court of Loadmanage, who is hereby authorized to administer such oath. Master and wardens of the fellowship appointed to examine pilots shall take the oath in Schedule marked (B.)

XVIII. And be it further enacted, That a proper and sufficient number of pilots of the Cinque Ports, not less than eighteen at any one time, and in succession from time to time, without intermission or any unnecessary delay, shall at all seasonable times, by day and night, constantly ply at sea, or be afloat between the *South Foreland* and *Dungeness*, to take charge of ships and vessels coming from the westward; and such pilots shall not allow any ship or vessel, having a signal for a pilot flying, to pass without attempting to board her; and that upon proper signals being made at and from signal houses now erected, or which may be erected on commanding situations near to *Dover* for that purpose, giving notice of the approach of any fleet of ships or vessels coming from the westward, all Cinque Port pilots not on duty at the time shall, according to such rules and regulations as to number, rotation, or otherwise, as have been or shall be made in that behalf, forthwith prepare to go afloat, and shall go off in sufficient time to fall in with such ships and vessels, on pain A number of Cinque Port pilots shall constantly ply at sea to take charge of ships coming from the Westward; and upon signals of fleets, all pilots shall prepare to go off.

pain of forfeiting, in case of neglect herein, for the first offence the sum of twenty pounds, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter as a pilot.

Masters of ships from the Westward not having a pilot shall display a signal for one, and facilitate his getting on board.

XIX. And be it further enacted, That the master or other person having the command of any ship or vessel, coming from the westward, and bound to any place in the rivers of *Thames* or *Medway*, not having a duly qualified Cinque Port pilot on board, shall, on the arrival of such ship or vessel off *Dungeness*, and until she shall have passed the south buoy of the *Brake*, or a line to be drawn from *Sandown Castle* to the said buoy, or have been at anchor for one hour, as hereinafter mentioned, display and keep flying the usual signal for a pilot to come on board; and if any duly qualified Cinque Port pilot shall be within hail or approaching and within half a mile, with the proper distinguishing flag flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time or shortening sail, or by all practicable means consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall give the charge of piloting his ship or vessel to such Cinque Port pilot; and every person commanding any such ship or vessel, who shall not display and keep flying the usual signal for a pilot to come on board, from the time such ship or vessel shall have arrived off *Dungeness*, and until she shall have passed the south buoy of the *Brake*, in a line to be drawn from *Sandown Castle* to the said buoy, (unless in the meantime a duly qualified Cinque Port pilot shall have come on board), or who shall within the limits aforesaid decline to take on board the first duly qualified Cinque Port pilot who shall offer, or to give charge of his ship or vessel to such duly qualified Cinque Port pilot, or who shall not heave to, shorten sail, or otherwise consistently with the safety of the ship or vessel facilitate such pilots coming on board as aforesaid, shall forfeit and pay double the amount of the sum which would have been demanded for the pilotage of such ship or vessel: Provided always, that if any ship or vessel coming from the westward, and bound to any place in the rivers *Thames* or *Medway*, shall anchor any where in the *Downs* between the *South Foreland*, and a line drawn from *Sandown Castle* to the south buoy of the *Brake*, having any licensed pilot other than a duly qualified Cinque Port pilot on board, it shall not be necessary for the master of such ship or vessel to display or keep flying the usual signal for a pilot to come on board thereof, any longer than for and during one hour next after such ship or vessel shall so have anchored as aforesaid; and it shall be lawful for any duly qualified Cinque Port pilot at any time before such ship or vessel shall have been at anchor

Penalty.

Ships anchoring within certain limits, not having a Cinque Port pilot, shall display a signal, and Cinque Port pilots may within an hour repair on

one

one hour with such signal flying as aforesaid, to repair on board the same, and to take charge of her up the said rivers, but not otherwise.

board and take charge.

XX. And whereas the pilots of the Cinque Ports are divided into two parts or classes, called *Upper and Lower Book Pilots*; and whereas the permitting Cinque Port pilots of the lower book to take charge of ships which, before the passing of the said Act of the fifty-second year of the reign of his said late Majesty king *George* the Third, could only be taken by pilots of the upper book has diminished and will diminish the profits of the upper book pilots, and has increased and will increase the profits of the lower book pilots, and it is therefore reasonable that compensation should be made by the lower book pilots, to the persons who were at the time of the passing of the said last mentioned Act upper book pilots; be it therefore enacted, That it shall be lawful for the court of Loadmanage from time to time to settle the amount of the deductions to be made from the rates received by lower book pilots, for taking charge of vessels of greater draught of water than they could before the passing of the said Act by law take, and in what proportions and how and in what manner, and to whom the same are to be paid, and how the same shall be applied in making compensation to the persons who were upper book pilots at the time of the passing of the said Act, for the losses they may sustain by such lower book pilots taking charge of such vessels as aforesaid, provided that such deductions so to be fixed as aforesaid shall from time to time be diminished and decreased as such persons who were so upper book pilots at the time of the passing of the said Act shall die, be superannuated, or discontinue to act as pilots, and that such deductions shall be taken and accepted in lieu of all other allowances or contributions whatsoever from the said lower book pilots, except trinity money, clerks fees, and for widows.

Court of Loadmanage to settle the compensation to be paid to upper book pilots by lower book pilots for being allowed to take charge of ships of greater draught.

XXI. And be it further enacted, That all persons licensed or to be licensed to act as Cinque Port pilots shall from time to time and at all times hereafter be subject to the regulations and government of the lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, and it shall be lawful for the master and wardens of the said society or fellowship of pilots of *Dover*, *Deal* and the *Isle of Thanet*, and the lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, his lieutenant for the time being, and the deputy lieutenant for the time being, or either of them, with the assent of the commissioners of Loadmanage, or the major part of them, present at an assembly commonly called *A Court of Loadmanage* to be held by the said lord warden or his deputy, as and when they shall see fit, or occasion shall require, to annul, alter or amend the rules and regulations of the said lord warden or court of Loadmanage, which shall be in force at the time of

Cinque Port pilots to be subject to the rules and regulations of the lord warden, &c.

of the passing of this Act, and which are hereby directed to remain in force notwithstanding the same, and to make from time to time such other sufficient rules and orders for enforcing the due observance of the provisions of this Act by all Cinque Port pilots, and for providing for the good government, constant attendance, and regulation of all such pilots in going off to and taking charge of, and conducting and navigating His Majesty's ships and vessels, and the ships and vessels in His Majesty's employ, and also all ships and vessels whatever and wheresoever, within the proper and usual limits of such pilots, or wherein they shall for the time being act or be; and for effectually securing the performance of all the duties and services of such pilots at all times, and all alterations and amendments in such rules and regulations so in force as aforesaid, and all other rules and regulations, or alterations or amendments thereof, hereafter to be made, shall, before the same are allowed to take effect, or become binding on any person or persons whatever, be printed and transmitted to the custom house in *London*, and there hung up in some conspicuous place in the long room of the said custom house; and notices shall be published in the *Gazette*, and put up at the custom houses within the Cinque Ports, of such rules and regulations, or any alterations thereof, for inspection, for one calendar month, in order that any persons interested therein, whether as owners or masters of ships, or pilots, or otherwise, may transmit to the lord warden of the Cinque Ports, or his lieutenant, any objections which they may have thereto, for the purpose of the same being altered or confirmed; and if no objection to the rules and regulations so made or altered shall be proposed, by or on the behalf of any person or persons, within the space of thirty days after the notices shall have been given and made public, in the manner hereinbefore provided, they shall have the same force and effect to all intents and purposes as all other rules and regulations for the government of pilots within the jurisdiction of the Cinque Ports have; but if an objection shall be made to the lord warden, or his lieutenant, by or on behalf of any person or persons, to any rule or regulation, or to any alteration in any rule or regulation, of which notice shall be given as aforesaid, within thirty days after the publication thereof, then and in such case the operation thereof shall be suspended until reference shall be had to His Majesty's most honourable privy council, who are hereby authorized and empowered to hear as well any person who shall be deputed by the court of Loadmanage, as by the person or persons objecting, and finally to decide as to the confirming, altering or rejecting such rules or regulations, which decision of the privy council shall be final and binding on all parties; and copies of such rules or regulations shall be delivered to every member of the said society or

or fellowship, and also to every new member of the said society on his election; and a copy or extract thereof shall be at all times in the possession of every pilot belonging to the Cinque Ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish rates of payment out of such surplus earnings of the lower book pilots, as may arise from their being allowed to take the higher classes of ships, in the absence of pilots of the upper book, under the provisions of this Act, for the better support and maintenance of the upper book pilots, and also penalties and forfeitures for the enforcing such rules and regulations, and better ordering of the said pilots, and for suspending or depriving any of the said pilots of their licences for breaking such rules or orders, or omitting to do any thing required by the same to be done, or for acting in anywise contrary to such rules or orders.

If such rules shall be defective, the Privy Council shall amend, correct, or enlarge the same

XXII. Provided always, and be it further enacted, That if any such rules and regulations so hereafter to be made in relation to Cinque Port pilots as aforesaid shall appear to be in any material point erroneous, insufficient or defective, it shall be lawful for the owner of any ship, or other person interested in the matter of such rules or regulations, to apply to His Majesty's most honourable privy council, who shall thereupon amend, correct or enlarge the same, or cause such other proper and sufficient rules and regulations to be drawn up for the purposes aforesaid; which rules and regulations so made, or so amended, corrected and enlarged, shall be distributed, published and made use of in such manner as His Majesty's said privy council shall in that behalf appoint and direct; and the same shall take effect from such time as in the said rules or regulations shall be expressed in regard to the commencement thereof.

As to the number of Cinque Port pilots, and how and when to be increased.

XXIII. And whereas under the provisions of an Act passed in the forty-eighth year of the reign of his said late Majesty King *George* the Third, intituled, *An Act for the better Regulation of Pilots, and of the Pilotage of ships and vessels navigating the* British *seas*, the number of pilots of the Cinque Ports was increased to one hundred and forty, and it hath been found that the said last mentioned number is at present, in the time of peace, more than sufficient for the trade and navigation of this kingdom; be it therefore enacted, That until the number of such pilots shall by death or otherwise be reduced below one hundred and twenty, or shall be added to, as hereinafter mentioned, it shall not be lawful for the said lord warden and constable of *Dover Castle*, or his lieutenant for the time being, without special permission in that behalf given by His Majesty's most honourable privy council, upon the recommendation of the said Corporation of Trinity House of *Deptford Strond*, to fill up any more than each alternate vacancy which shall arise in

in the number of such pilots: Provided always, that twenty Cinque Port pilots more, or any less number of such pilots, shall and may be added to the then existing number whenever such addition shall be directed to be made by an order of such privy council, upon application thereto for that purpose by the said Corporation of Trinity House, and in like manner from time to time, so as the number of Cinque Port pilots shall not at any one time exceed one hundred and eighty, of which said reduction or additions respectively notice shall be given by or under the authority of the lord warden of the Cinque Ports, in the *London Gazette*, and in one or more newspaper or newspapers circulating in the counties of *Middlesex* and *Kent*.

The increased number of pilots shall be kept up.

But in peace no more than each alternate vacancy shall be filled up without permission of Privy Council, unless number below 120.

XXIV. And be it further enacted, That whenever such additions to the number of the said pilots shall respectively take place, as hereinbefore provided, the numbers so increased shall from thenceforth be kept up from time to time by the appointment of pilots in succession, as often as any vacancy or vacancies shall happen by death, incapacity, or dismission: Provided always, That in time of peace no more than each alternate vacancy in the number of Cinque Port pilots shall be filled up without a special permission in that behalf given by His Majesty's privy council, upon the recommendation of the said Corporation of Trinity House, unless the number of such pilots shall, at the time of such filling up, be reduced below one hundred and twenty, in which case such vacancy shall and may be filled up from time to time without such permission as aforesaid.

Rates in Tables (A.) and B.) of Schedule (A.) may be demanded by pilots, and no greater or less.

XXV. And be it further enacted, That from and after the passing of this Act, the respective rates or prices hereinafter enumerated in the Tables marked (A. and B.) respectively in the Schedule marked (A.) to this Act annexed, shall and may be lawfully demanded and received by any pilot licensed or to be licensed by the said Corporation of Trinity House of *Deptford Strond*, or by the lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, or his lieutenant for the time being respectively, for the piloting or conducting of any ship or vessel from place to place, as expressed in the said tables respectively; that is to say, the respective rates or prices enumerated in the said table marked (A.) shall and may be demanded and received by any pilot licensed or to be licensed by the said corporation; and the respective rates or prices enumerated in the said table marked (B.) shall and may be demanded and received by any pilot licensed or to be licensed by the said lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, or his lieutenant for the time being; and no greater or less rates or prices, or other reward or emolument shall under any pretence whatever be demanded, solicited, received, paid, or offered than such rates or prices, on pain of forfeiting ten pounds for every such

Penalty.

such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying or offering such greater or less rate or price, reward, or emolument.

Rates may be varied by the Corporation of Trinity House and lord warden of the Cinque Ports respectively, with the consent of the Privy Council.

XXVI. Provided always, That it shall and may be lawful for the said Corporation of Trinity House of *Deptford Strond* (as to the said rates or prices to be demanded and received by pilots licensed, or to be licensed, by the said corporation), and for the said lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, or his lieutenant for the time being (as to the said rates or prices to be demanded and received by pilots licensed or to be licensed by the said lord warden and constable, or his lieutenant), and they are hereby respectively authorized and empowered from time to time, and at any time or times hereafter, with the consent of His Majesty, his heirs and successors, in his or their most honourable privy council, to increase, reduce, alter, or modify all or any or either of the said respective rates or prices so enumerated in the said tables respectively, or to substitute other rates or prices in lieu thereof, and the same rates or prices so increased, reduced, altered, modified, or substituted as aforesaid, again in like manner and with the like consent from time to time to increase, reduce, alter, or modify, or others to substitute in lieu thereof, and to fix and determine the period (so that the same be not less than three calendar months from the giving of the notice hereinafter mentioned) from and after which such altered or substituted rates and prices are to be demanded, of which rates and prices, and of the period from and after which the same are to be demanded, notice shall from time to time be given, by hanging up printed tables thereof in some public or conspicuous place in the custom house of *London*, and also at the Trinity House in *London*; and from and after the period specified in such last mentioned tables, the respective rates or prices therein enumerated may and shall be demanded and received by any pilot licensed by the said Corporation of Trinity House, or by the lord warden of the Cinque Ports and constable of *Dover Castle* for the time being, or his lieutenant for the time being respectively, instead of the said several rates and prices mentioned in the said Tables marked (A. and B.) respectively; and from and after such period, no greater or less rates or prices, or other reward or emolument, shall, under any pretence whatever, be demanded, solicited, received, paid, or offered, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying or offering such greater or less rate or price.

Penalty.

Persons applying for licences shall execute a bond for securing obedience to bye-laws.

XXVII. And be it further enacted, That every person who shall apply for a licence to act as a pilot by virtue of this Act, shall, before any licence shall be granted to him, execute a bond in a penal sum, at the discretion of the said Corporation of Trinity House of *Deptford Strond*, or of the lord warden of the Cinque Ports

Ports and constable of *Dover Castle* for the time being, or his lieutenant for the time being (as the case may be), to an amount not exceeding one hundred pounds, to be paid to the said corporation, or to the society or fellowship of pilots of *Dover*, *Deal*, and the *Isle of Thanet* (as the case may be), their successors or assigns, with a condition subjoined thereto for better securing the due obedience of such pilot to the bye-laws, rules, orders, regulations, and ordinances made in pursuance of any Act or Acts of Parliament heretofore passed, or which shall be made and framed pursuant to this Act, which bond shall be capable of being given in evidence in any court of law or equity, without being stamped according to the laws relating to the stamp duties:

Bonds already given to remain in force.

Provided always, That all bonds before given by pilots under any former Act or Acts of Parliament shall continue in force, and be deemed to be given under this Act, unless new bonds shall in any case be required by the said corporation, or by the said lord warden and constable, or his lieutenant respectively, in which case new bonds shall be given accordingly.

Bye-laws, &c. under former Act to remain valid, unless altered by this Act.

XXVIII. And be it further enacted, That all bye-laws, rules, orders, regulations, and ordinances made under the said recited Act of the forty-eighth year of the reign of his said late Majesty, or under the said recited Act of the fifty-second year of the reign of his said late Majesty, or either of them, and which shall be in force under the same respectively at the time of the passing of this Act, shall remain, continue and be in full force and virtue, until the same respectively shall have been annulled or altered, or other bye-laws, rules, orders, regulations or ordinances made in lieu thereof under this Act, and shall be and are hereby declared to be good and valid bye-laws, rules, orders, regulations, and ordinances under this Act, as fully as if they had been made under the authority of the same; any thing hereinbefore, or in any other Act of Parliament, to the contrary notwithstanding.

Licences may be revoked, annulled, or suspended.

XXIX. Provided always, and be it further enacted, That as well every such licence so granted or to be granted, renewed, or confirmed, by the said Corporation of Trinity House of *Deptford Strond* as aforesaid, as also every such licence so granted or to be granted by the said lord warden of the Cinque Ports and constable of *Dover Castle*, or his lieutenant for the time being as aforesaid, shall and may be by the said corporation, or by the said lord warden and constable of *Dover Castle*, or his lieutenant for the time being respectively, annulled, suspended, or adjudged to be forfeited, in such manner and at any such time or times as to them the said corporation and lord warden, or his lieutenant for the time being respectively shall seem meet, as well during as at the end of the period for which such licences respectively shall have been so granted, renewed or confirmed as aforesaid.

Pilots so suspended, &c. and

XXX. Provided always, and be it further enacted, That every pilot whose licence shall be revoked, annulled, suspended, or adjudged

adjudged to be forfeited, or who shall be suspended from acting as a pilot, as hereinbefore or hereinafter mentioned, shall and may, at any time within six months next after such revocation, annulling, suspension, or adjudication shall have been made, and upon giving notice to the corporation or other authority by which such licence shall have been so revoked, annulled or suspended, or such adjudication made as aforesaid, and every person who, having complained of any such pilot, shall be dissatisfied with the adjudication made upon the matter of such complaint by the corporation or other authority which shall have cognizance thereof, shall and may, at any time within six months next after such adjudication and upon giving notice to the corporation or other authority by which such adjudication was made, appeal to His Majesty's most honourable privy council, who shall thereupon hear the appeal, and confirm or annul any determination or adjudication in the premises, or at their discretion make any particular and special order relating thereto, and to the matter of such appeal, and the costs thereof, as the case may require.

persons complaining against them, may appeal to the Privy Council.

XXXI. And be it further enacted, That it shall be lawful for the said Corporation of Trinity House of *Deptford Strond*, and for the said society or fellowship of pilots of *Dover*, *Deal*, and the *Isle of Thanet*, and also for all other corporate bodies, or persons having lawful authority to appoint pilots within the limits of their respective jurisdictions, to license vessels of such size and description as shall appear to them to be proper, for the purpose of having pilots constantly in attendance in such vessels at sea, and to nominate and appoint, and from time to time to remove and again appoint the masters of such vessels respectively; and for the better support of such pilot vessels, it shall be lawful for any number of pilots, licensed by virtue of this Act, or otherwise lawfully licensed, with the consent of the said corporate bodies, or persons by whom respectively such pilots have been or shall be appointed as aforesaid, to constitute a joint stock company or companies, for the providing and maintaining of such pilot vessels, which companies and the said vessels shall at all times be subject to such rules and regulations as shall from time to time be sanctioned and approved in that behalf by the corporate bodies, or persons by whom respectively such pilots shall respectively have been licensed.

Vessels to be licensed for having pilots in attendance at sea, &c.

XXXII. And be it further enacted, That every pilot boat or vessel, or other boat or vessel, in the pilot service of any corporation or society established by law, in relation to pilotage, or of or belonging to any person authorized to act as a pilot by such corporation or society, shall at all times, and on every station, be fitted with black sides, and have the upper streak next the gunwale painted white, and shall while afloat carry a flag at the mast-head, or on a sprit or staff, or in some other equally conspicuous situation, which flag shall be of large dimensions, proportioned

How pilot boats are to be distinguished.

portioned to the size of the boat or vessel carrying the same, and shall be half red and half white, in horizontal stripes, of which the uppermost shall be white, and the same shall at all times be kept and preserved in a clean and distinct condition, so as to be easily discerned at a proper and sufficient distance; and every such boat or vessel shall also have the name of the principal pilot thereof for the time being painted in broad white letters, of three inches in length, on a black ground, on her stern, and on each bow such number as shall be expressed in the licence of such principal pilot, which name and number shall not be hid or concealed by any person at any time, on pain of forfeiting, for the omission or evasion of any of the provisions hereinbefore made in respect of such pilot boat or vessel, the sum of twenty pounds, to be paid by the senior pilot on board, who is hereby declared answerable for the due observance of the matters aforesaid, by every person on board such boat or vessel; and in case any pilot shall be carried off in any boat not in the service of any such corporation or society, such pilot shall exhibit a similar flag at the mast-head, or on a sprit or staff, to distinguish that such boat has a pilot on board, on pain of such pilot so carried off forfeiting the sum of twenty pounds, unless he shall show reasonable cause for having omitted to exhibit such flag.

Penalty.

Pilot carried off in any other boat to display a flag.

Penalty for carrying distinguishing flag without having a pilot on board.

XXXIII. And be it further enacted, That if any boat or vessel, not having a licensed pilot on board, shall without lawful authority carry such distinguishing flag as aforesaid, the owner or owners, or the master or other person having charge of such boat or vessel, displaying or carrying any such flag, shall for every such offence forfeit and pay a sum of one hundred pounds.

Boat running before a vessel, not having a pilot, and which cannot be boarded, entitled to pilotage.

XXXIV. And be it further enacted, That if any boat or vessel shall run before any ship or vessel not having a licensed pilot on board, when such ship or vessel cannot, from particular circumstances, be boarded for the purpose of directing her course, until a licensed pilot can be put on board, the pilot on board such boat or vessel, or if no pilot shall be on board, and the person having charge of her shall run her before such ship or vessel, at the request or by the direction of the master, or other person having the command thereof, then such person having charge of such boat or vessel shall be entitled to the full pilotage for the distance run, until a duly licensed pilot shall be put on board, as if such pilot, or person respectively, had been actually on board such ship or vessel, and had the charge of her as a pilot.

Name, &c. of pilots appointed to be transmitted to the Trinity

XXXV. And be it further enacted, That from and after the passing of this Act, all bodies politic and corporate, and all and every other person or persons, authorized to appoint or license pilots in or for any port of *England*, or any of the seas, coasts, harbours or rivers thereof, or places therein, shall from time

time to time, as and when each appointment of a pilot shall be by them respectively made, forthwith transmit to the Corporation of Trinity House of *Deptford Strond*, at the Trinity House in *London*, and to the commissioners of His Majesty's customs, at the custom house in *London*, the christian and surname, age and place of residence of every such pilot so appointed, distinguishing the limits within which such pilot is appointed to act, and by whom such appointment is made; and the said bodies politic and corporate, and other persons authorized to appoint and license pilots as aforesaid, shall and they are hereby required to transmit to the said Corporation of Trinity House, at the Trinity House aforesaid, and to the said commissioners of customs, at the custom house aforesaid, annually, on the thirty-first day of *December*, or within one calendar month afterwards, a list, corrected up to the said thirty-first day of *December* in each year, of the names and residences of all the pilots within their several jurisdictions, in which list so to be transmitted to the Trinity House as aforesaid shall be stated all such alterations (if any) as may have been made in the rates of pilotage charged, or in the rules and regulations for governing pilots within their respective districts.

House, and a list of all pilots annually to the Trinity House and Custom House.

XXXVI. And whereas by certain Acts of Parliament for the more effectual performance of quarantine, pilots are required, on going on board ships arriving from foreign parts, in certain cases to give information to the commanders thereof respecting proclamations and orders in council relative to the performance of quarantine, which renders it necessary that notice of such proclamations and orders should have been previously communicated to all pilots throughout *England*; be it further enacted, That the said commissioners of His Majesty's customs shall from time to time with all convenient speed transmit to the principal officers of the revenue under their management at the several ports in *England*, the names and places of residence of all such pilots of whose nomination they shall receive notice from the proper authority, or who shall be in the list so annually to be transmitted to such commissioners as aforesaid, as shall reside within the limits of each port respectively, in order that the said principal officers at the several ports may be enabled to communicate and deliver to every pilot within the limits of such port respectively copies of all proclamations or orders in council respecting the performance of quarantine by ships arriving from infected places, which the said officers are hereby required to communicate accordingly.

Commissioners of Customs to transmit to their principal officers at ports in England the names, &c. of pilots residing within the limits of each port.

XXXVII. And be it further enacted, That the said Corporation of Trinity House of *Deptford Strond*, and the court of Loadmanage of the Cinque Ports, and all other corporations and persons authorized to manage or direct pilots in any part of

List of Vessels employed for pilotage, with the number of

hands, to be annually transmitted to the receiver of Sixpenny Duty in the Port of London.

England, under the authority of any Act of Parliament or charter whatever, shall annually, on the first day of *January* in every year, or within one calendar month then next following, transmit to the office of the receiver of the sixpenny duty in the port of *London* a list of all the vessels of every description employed by them respectively, or by persons under their authority, for the purposes of pilotage, with the number of men and boys belonging to or serving in any such vessels.

No pilot shall be taken to sea beyond his limits, without his consent, except in case of necessity, and then he shall receive 10*s.* 6*d.* per diem above his pilotage.

XXXVIII. And be it further enacted, That no pilot shall be taken to sea beyond the limits of his district by the commanding officer of any of His Majesty's ships, or by the master or other person having the command of any other ship or vessel whatever, without such pilot's free consent, except under circumstances of absolute and unavoidable necessity; and then and in such case every pilot so taken to sea shall over and above his pilotage have and receive ten shillings and sixpence *per diem*, to be computed from and inclusive of the day next after the day on which the ship or vessel shall pass the limit to which such pilot was engaged to pilot her up to, and until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there.

Pilots shall qualify themselves, and conduct ships into and out of Ramsgate and other harbours.

XXXIX. And whereas certain harbours near the *Downs* have become much frequented as places of safety, and ships and vessels lying in or sailing through the *Downs* are oftentimes compelled to run for those harbours, and it is therefore necessary to make provision for the pilotage into and out of such harbours; be it therefore enacted, That all pilots whose licences shall authorize them to pilot ships or vessels from any place to the westward up to *London* Bridge, shall qualify themselves, and shall be examined as to their qualification and ability to conduct any ship or vessel into and out of *Ramsgate* Harbour, and the harbours of *Dover*, *Sandwich*, and *Margate*, and shall be obliged to pilot any ships or vessels into and out of any of the said harbours; and if any such pilot shall refuse to take charge of or conduct any ship or vessel into or out of any of the said harbours, such pilot shall forfeit all pay and reward to which he might otherwise have been entitled for the pilotage of any such ship or vessel, and shall be subject to such fine or other punishment as shall be established in that behalf by the bye-laws, rules, orders, regulations, or ordinances of the corporation, or other authority, from which the licence of such pilot shall have been derived.

Penalty for refusal.

Rates for such pilotage.

XL. Provided always, and be it further enacted, That every licensed pilot who shall take charge of and conduct any ship or vessel into or out of *Ramsgate* Harbour, or into or out of the harbours of *Dover*, *Sandwich*, or *Margate*, shall be entitled to and shall receive for such pilotage at and after the rate of five shillings

shillings for every foot of the draught of water of the ship or vessel so piloted and conducted by him into or out of any such harbours.

Ships bound to the Thames repairing to places for performance of quarantine, to pay full charges of pilotage, &c.

XLI. And be it further enacted, That the master or other person commanding any ship or vessel bound to the river *Thames*, and which shall repair to *Standgate Creek*, or any other place appointed for the performance of quarantine, shall pay the full charges of pilotage up to *Standgate Creek*, or other the place so appointed, and the pilot conducting such ship or vessel to *Standgate Creek*, or other the place so appointed as aforesaid, shall be entitled to the further sum of eight shillings *per diem* for the days he shall be obliged to remain on quarantine.

Pilots quitting ships in the Thames or Medway, without consent, before arrival at the place to which bound, to forfeit pay, and be liable to penalty.

XLII. And be it further enacted, That if any pilot taking charge of any ship or vessel into the river *Thames* or *Medway* shall quit such ship or vessel at *Gravesend* or *Standgate Creek*, or in any other part of the *Thames* or *Medway* respectively, before such ship or vessel shall have arrived at the place to which she is bound in the said rivers respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall with such consent come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot so quitting such ship or vessel, shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to *Gravesend*, *Standgate Creek*, or such part of the *Thames* or *Medway* respectively as aforesaid, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this Act, or of the bye-laws, rules, orders, regulations, and ordinances hereby directed to remain in force, or which may be made or established in pursuance hereof, any pilots shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

Pilot to write his name in log book, and same to be inserted in report of ships entering the port of London, and reported daily to the Trinity House, and monthly to the Lord Warden of the Cinque Ports.

XLIII. And be it further enacted, That every pilot shall write his christian and surname in the log book of every master or other person having the command for the time being of any ship or vessel entering the port of *London*, and required to be piloted according to the directions of this Act; and every pilot or other person inserting a false name shall forfeit the sum of twenty pounds; and the master or other person having the command of such ship or vessel shall, in making the entry or report of such ship or vessel inwards, insert or cause to be inserted in such entry or report, the name or names of the pilot or pilots employed or engaged to pilot such vessel into the said port, which insertion shall be made in the said entry or report (without fee or reward) by the proper officer of the customs, who shall report the same to the corporation of the Trinity House daily, and to the lord warden of the Cinque Ports monthly; and such officer is hereby

authorized and required to reject such entry or report, unless and until the name or names of the pilot or pilots so employed or engaged as aforesaid shall be inserted or notified to such officer for insertion in such entry or report as aforesaid; and also that the principal searcher or clearing officer of the customs at *Gravesend* shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of *London*, and shall transmit monthly lists of such names to the said corporation of Trinity House, on pain of forfeiting a sum not exceeding ten pounds, nor less than five pounds, to be paid by each and every of the persons aforesaid, who shall neglect to comply with any of the foregoing regulations.

Monthly Reports to be made of vessels clearing outwards

Penalty

XLIV. And be it further enacted, That all sums of money which shall become due to any licensed pilot, for the pilotage of any ship or vessel, except ships and vessels not having British registers, trading to and from the port of *London*, shall and may be recovered from the owners or masters of such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for the said ship or vessel in the port of her arrival or delivery, as to pilotage inwards, and in the port from whence she shall clear out or sail as to pilotage outwards; which sums of money shall and may be levied in such and in the like manner, according to the amount of any such sums of money as aforesaid respectively, as any penalty or penalties of the like amount may be recovered and levied under and by virtue of this Act, demand thereof being made in writing at least fourteen days before such levy.

How pilotage of ships, except those not having British Registers, trading to and from the port of London, may be recovered.

XLV. And be it further enacted, That the consignees or agents of any ship or vessel, from whom any sum of money due to any licensed pilot for pilotage shall have been recovered, or shall be recoverable, or by whom any such sum of money shall have been paid, are hereby authorized and empowered to retain in their hands respectively, out of any monies which they may have received, or shall thereafter receive, for or on account of such ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage, and any expenses attending the same.

Consignees or agents may retain pilotage which they have paid or are liable to.

XLVI. And in order to prevent as well impositions and disputes respecting the charges for, as evasions in the payment of the pilotage of such ships and vessels trading to and from the port of *London*, and not having British registers, as are by law required to be piloted by pilots licensed by the said Corporation of Trinity House, be it further enacted, that from and after the passing of this Act, the master or other person having the charge of every such ship or vessel which shall enter into or sail from the said port of *London*, or the consignees of or agents for such ship or vessel, shall pay or cause to be paid at the Trinity House in *London*, to such person or persons as shall from time to time be in

In what manner pilotage of ships not having British registers trading to and from the port of London shall be paid.

in that behalf appointed by the said corporation of Trinity House, the full pilotage inwards and outwards respectively of every such ship or vessel; that is to say, in all cases as to pilotage outwards the full amount of pilotage for the distance which such ship or vessel shall by law be required to be piloted by such licensed pilot as aforesaid; and so far as concerns the pilotage inwards, where a duly licensed pilot shall have been on board such ship or vessel, the full amount of pilotage for the distance piloted by him, if greater than that which such ship or vessel shall be so required to be piloted; and if less, or if no such pilot shall have been on board, then the full amount of the pilotage for the distance which such ship or vessel shall be by law required to be piloted as aforesaid; and if such pilotage inwards be not paid within fourteen days from the day of such ship or vessel's reporting inwards, the same shall and may be recovered by the said corporation from the master or other person having the charge of every such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for such ship or vessel in the said port of *London*, and shall and may be levied in such and the like manner, according to the amount of any such sums of money respectively, as any penalty or penalties may be recovered and levied under and by virtue of this Act.

Certificate of payment of pilotage to be given.

XLVII. And be it further enacted, That the person or persons so to be appointed by the said Corporation of Trinity House of *Deptford Strond* as last aforesaid shall, upon his or their receiving such pilotage, give to the person paying the same a certificate thereof in writing, and that no ship or vessel not having a British register, and being required by law to be piloted as aforesaid, shall be cleared at the office of His Majesty's customs in the said port of *London*, on her outward-bound voyage, without the production of such certificate as aforesaid; and the said person or persons so to be appointed as aforesaid shall, upon proof to the satisfaction of the said corporation that such pilotage service hath been duly performed, pay over to the pilot duly licensed, who shall have had charge of every such ship or vessel, all such sum or sums of money as shall have been received by such person or persons appointed as aforesaid, and as shall be due and payable to such pilot for or in respect of such pilotage service so by him performed, after deducting and retaining thereout the poundage hereinbefore made payable to the said corporation; and the residue of such pilotage received by such person or persons so appointed as aforesaid shall, together with the poundage aforesaid, be carried to and applied to the purposes of the pilots fund of the said Corporation of Trinity House of *Deptford Strond* hereinafter mentioned.

Receivers to pay over to the Pilot what shall be due to him;

and the residue with the poundage to be carried to the pilots' fund.

Corporation of Trinity House may

XLVIII. Provided always, and be it further enacted, That in any case where such pilotage shall have been received as aforesaid,

out of pilotage received, reward unlicensed persons who have piloted in the absence of a licensed pilot.

said, for or in respect of any ship or vessel not having a British register, if it shall appear to the said corporation that no licensed pilot was in fact employed on board thereof, it shall and may be lawful to and for the said corporation, and they are hereby authorized, if they shall so think fit, out of such pilotage to make or give to any unlicensed person or persons who shall have piloted or assisted in piloting such ship or vessel during so long time as no licensed pilot shall, to the knowledge of such unlicensed person or persons, have offered to take charge thereof, such compensation or reward as in the discretion of the said corporation they shall deem proper in that behalf, not exceeding the sum which would have been payable to a duly licensed pilot.

How the amount of pilotage outward of foreign vessels shall be ascertained.

XLIX. And in order the better to facilitate the ascertaining and settling the amount of the pilotage outward of ships and vessels not having British registers, in the port of *London*, under the authority of this Act, be it further enacted, That the rates or amount of pilotage outward, to be payable and paid in respect of all such ships and vessels, shall from time to time be calculated and made out according to the scale or amount of the tonnage of every ship or vessel, upon or according to which such ship or vessel shall be rated in the said port of *London*, to the payment of the light and other dues payable to the said Corporation of Trinity House of *Deptford Strond*, or according to the draught of water thereof, as the said Corporation of Trinity House of *Deptford Strond* shall in their discretion think most proper; any thing herein contained to the contrary thereof notwithstanding.

How controversies respecting the draught of water, of vessels on the Thames, shall be settled.

L. And in order to prevent or settle controversies concerning the draught of water of ships and vessels from time to time on the river *Thames*, (not having British registers,) be it further enacted, That whenever any difference about the draught of water of any ship or vessel shall arise between the master or other person having the command of any such ship or vessel, and any person who shall have piloted the same into the said river, or who shall be required to pilot the same therefrom, pursuant to the directions of this Act, the said corporation of Trinity House of *Deptford Strond*, or some proper officer or person appointed by them, shall admeasure the draught of water of such ship or vessel, and shall settle and determine the same between the parties, upon application made by either of them to the said corporation within twelve hours after such ship or vessel shall have arrived at her moorings in the river, on any inward voyage, or before the cargo thereof shall be begun to be unladen, or before such ship or vessel shall quit her moorings on any outward voyage, for which admeasurement the officer or person making the same shall be paid one guinea if the ship or vessel shall be below the entrance to the *London Docks* at *Wapping*, and half a guinea if above the said entrance to the *London Docks*, by the person against

against whom the said officer or person so appointed by the Corporation of the Trinity House shall decide.

Corporation of Trinity House to make Regulations with respect to pilotage of small foreign vessels.

LI. And whereas it may be expedient from time to time to relieve such ships and vessels not having British registers as may come to the port of *London* with fish, corn or other provisions, in manner hereinafter directed; be it therefore enacted, That it shall be lawful for the said Corporation of Trinity House of *Deptford Strond*, and they are hereby authorized and empowered from time to time, at their discretion, to make all such regulations in relation to the piloting of ships not having British registers, bringing fish, corn or other provisions into the port of *London*, and which are or ought to be piloted by pilots licensed by the said Corporation of Trinity House, for the ease and relief of such ships and vessels in respect of the rates or amount of pilotage hereby made payable or demandable for such ships and vessels, or for the exemption of such ships or vessels from any such rates or amount, or from any rules or regulations as to the pilotage of such ships or vessels under the provisions of this Act, or of any other Act of Parliament relating to pilotage, or under any law or usage whatsoever, as the said Corporation of Trinity House of *Deptford Strond* shall from time to time deem just, proper and expedient, in relation to such ships and vessels respectively; any thing herein contained to the contrary thereof notwithstanding.

Funds arising from surplus rates of pilotage on ships not having British registers, to be applied for relief of indigent pilots, &c.

LII. And whereas under and by virtue of the said Acts, passed in the forty-eighth and fifty-second years of the reign of his said late Majesty King *George* the Third, the surplus rates of pilotage imposed on ships not having British registers have been applied in creating funds for the relief of superannuated and infirm pilots belonging to the said Corporation of Trinity House of *Deptford Strond*, and the fellowship of the Cinque Ports respectively, as in the said Acts mentioned; and it is expedient that the surplus rates of pilotage imposed by this Act on such ships should be carried to such funds respectively, and that the said funds should be applied as hereinafter mentioned; be it therefore enacted, That as well the fund already created for such superannuated and infirm pilots belonging to the said Corporation of Trinity House of *Deptford Strond* as aforesaid, as also all such surplus rates by this Act, imposed or to be imposed as aforesaid, on ships not having British registers, which shall pertain to the establishment of the said Corporation of Trinity House, shall be carried to a fund to be called "The "Pilots Fund," and that such last mentioned fund shall be applied by the said corporation in the manner following; (that is to say,) after defraying the expences of carrying this Act into execution, so far as concerns the said Corporation of Trinity House, the said fund shall be applied by the said corporation for the better support, maintenance or relief of such indigent pilots

pilots belonging to the said corporation, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, and of the wives, widows and children of such pilots, to be applied and distributed in such manner and under such rules and regulations as the said Corporation of Trinity House shall order and provide; and that as well the fund already created for such superannuated and infirm pilots belonging to the society or fellowship of the Cinque Ports as aforesaid, as also all such surplus rates of pilotage by this Act imposed or to be imposed as aforesaid on ships not having British registers, which shall pertain to the establishment of the Cinque Ports, shall be applied by the said court of Loadmanage for the better support, maintenance or relief of such indigent pilots belonging to the said society or fellowship as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, to be applied and distributed in such manner and under such rules and regulations as the said court of Loadmanage, shall order and provide; and as well all and every the pilots who shall receive any such surplus rates, as also the person or persons to whom the pilotage of ships and vessels not having British registers, and entering into or sailing from the said port of *London*, is by this Act directed to be paid, shall and they are hereby required to pay over all such surplus rates to such receivers, and at such convenient places as shall be in that behalf respectively appointed by the said Corporation of Trinity House, and by the said lord warden and court of Loadmanage respectively; of all which receipts, and of the appropriations aforesaid, the said corporation and the said lord warden and court of Loadmanage respectively, shall annually lay an account before Parliament, within twenty days after the commencement of each session.

Owners or masters of ships not to be answerable for loss from want of a proper pilot, unless arising from refusal to take one, &c.

LIII. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whatsoever, from or by reason or means of no licensed pilot being on board of any such ship or vessel, or of no duly qualified pilot being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means, consistently with her safety, for the purpose of taking on board thereof any pilot who shall be ready and offer to take charge of the same.

Owners not liable for more than the value of the ship and freight.

LIV. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to make the owner of any ship or vessel liable in any such case for any loss or damage beyond the value of such ship

ship or vessel, and her appurtenances, and the freight due or to grow due for and during the voyage wherein such loss or damage may happen or arise.

Owners or masters not to be liable for loss arising from incompetency of pilots.

LV. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this Act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.

This Act not to deprive persons of remedies previously existing.

LVI. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to deprive any person or persons of any remedy or remedies upon any contract of insurance, or of any other remedy whatsoever, which he or they might have had if this Act had not been passed, by reason or on account of the neglect, default, incompetency, or incapacity of any pilot duly acting in the charge of any ship or vessel under or in pursuance of any of the provisions of this Act, or by reason or on account of no pilot, or of no duly qualified pilot being on board of any such ship or vessel, unless it shall be proved that the want of a pilot, or of a duly qualified pilot, shall have arisen from any refusal to take a pilot or a duly qualified pilot on board, or from the wilful neglect of the master of such ship or vessel, in not heaving to or using all practicable means consistently with the safety of such ship or vessel, for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

Licensed pilots who have executed bond, not liable for neglect or want of skill beyond its penalty and the pilotage.

LVII. Provided always, and be it further enacted, That no pilot licensed or to be licensed as aforesaid, who shall have executed the bond hereinbefore directed to be executed by him, and shall be piloting or conducting, within the limits specified in his licence, any ship or vessel which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be liable to any action for damages at the suit of the party grieved in any greater sum than the amount which shall have been specified by way of penalty in such bond, and the pilotage payable to him in respect of the voyage on which such ship or vessel shall then be, for any loss or damage which shall happen from or by reason or means of his neglect or want of skill whilst acting in his capacity of a pilot on board such ship or vessel.

Penalty on masters of vessels piloted by

LVIII. And be it further enacted, That every master of any ship or vessel who shall act himself as a pilot, or who shall employ or continue employed as a pilot any unlicensed person, or any

any other than a licensed pilot.

any licensed person acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any pilot licensed and qualified to act as such, within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of such ship or vessel, or have made a signal for that purpose, shall forfeit for every such offence double the amount of the sum which would have been legally demandable for the pilotage of such ship or vessel, and shall likewise forfeit for every such offence an additional penalty of five pounds for every fifty tons burthen of such ship or vessel, if the Corporation of Trinity House of *Deptford Strond*, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said lord warden for the time being, or his lieutenant for the time being, as to cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing.

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

LIX. Provided always, and be it further enacted, That for and notwithstanding any thing in this Act contained, the master of any collier, or of any ship or vessel trading to *Norway*, or to the *Cattegat* or *Baltic*, or round the *North Cape*, or into the *White Sea*, on their inward or outward voyages, or of any constant trader inwards, from the ports between *Boulogne* inclusive and the *Baltic* (all such ships and vessels having British registers, and coming up either* by the *North Channel*, but not otherwise), or of any *Irish* trader using the navigation of the rivers *Thames* and *Medway*, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel wholly laden with stone from *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, and being the production thereof, or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as hereinafter provided; or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any Act or Acts of Parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully, and without being subject to any of the penalties by this Act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

His Majesty in council may authorize ships not exceeding 60 tons burthen to be conducted without

LX. Provided also, That from and after the passing of this Act it shall and may be lawful for His Majesty, by and with the advice of his privy council, or by any order or orders in council, to permit and authorize ships and vessels not exceeding the burthen of sixty tons, and not having a British register, to be

* So in the roll.

be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this Act imposed on British ships and vessels, not exceeding the like burthen.

pilots, as British ships of the like burthen.

LXI. Provided also, That nothing in this Act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this Act, for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in anywise notwithstanding.

Masters not liable to penalties for employing unlicensed persons whilst ship in distress.

LXII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to subject to any penalty the master or mate of any ship or vessel being the owner or a part owner of such ship or vessel, and residing at *Dover*, *Deal*, or the *Isle of Thanet*, for conducting or piloting such his own ship or vessel from any of the places aforesaid, up or down the rivers *Thames* or *Medway*, or into or out of any port or place within the jurisdiction of the Cinque Ports.

Master or mate being owner or part owner, and residing at Dover, &c. may pilot his own ship up or down the Thames or Medway.

LXIII. Provided always, and be it further enacted, That when any ship or vessel shall have been brought into any port or ports in *England* by any pilot duly licensed, nothing in this Act contained shall extend or be construed to extend to subject to any penalty the master or mate, or other person belonging to such ship or vessel, and having the command thereof, or if in ballast, any person or persons appointed by any owner, or master or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

Ships brought into any port by pilots may be removed by the master, &c. for certain purposes.

LXIV. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any master or other person having the command for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or stern post thereof, denoting the draught of water, or shall be privy and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

Penalty for reporting to pilots a false account of a vessel's draught of water, or altering marks denoting such draught.

LXV. And

Description of pilot to be on his licence, &c.

LXV. And be it further enacted, That a particular description of the person of every pilot shall be written in or upon or endorsed on the back of his licence; and every captain or master or other person having the command of a ship or vessel shall, on receiving a pilot on board, inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master or other person is hereby required forthwith to transmit a copy of such licence to the corporation or other authority by which such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence as may lead to the discovery of the offender.

No pilot shall act until his licence has been registered, nor without producing it.

LXVI. And be it further enacted, That no person shall take charge of any ship or vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, until his licence shall have been registered by the principal officers of the custom house of the place at or nearest to which such pilot shall reside, (which officers are hereby required to register the same without fee or reward), nor without having his licence at the time of his so acting in his personal custody, and producing the same to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot, or to whom he shall offer his services, on pain of forfeiting a sum not exceeding thirty pounds, nor less than ten pounds, for the first offence; and for the second or any subsequent offence, a sum not exceeding fifty pounds, nor less than thirty pounds; and upon further pain, as to any person licensed as aforesaid, of forfeiting his licence or being suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived, either for the first, second, or any subsequent offence.

Penalty.

Licences to be delivered up when required, and on death of a pilot his licence shall be returned to the corporation or authority that granted it.

LXVII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid, shall, at all times when thereunto required, produce or deliver and yield up his licence to the corporation or other authority by which the same was granted; and that on the death of any such pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall without wilful delay transmit such licence to the corporation or other authority by which the same was granted, on pain of such pilot, executor, administrator, or other person, forfeiting for any neglect therein a sum not exceeding twenty pounds nor less than forty shillings.

Penalty.

Pilots keeping public houses, &c. (unless authorized) or offending

LXVIII. And be it further enacted, That from and after the passing of this Act, if any pilot, licensed by virtue of this Act, or otherwise duly licensed, shall keep, or be concerned in keeping, either by himself or any agent or servant, or other person, or shall in any way be interested in the keeping of any public house

or

or tavern or place of public entertainment, or in the selling of any wine or spirituous liquors, or tobacco or tea (unless such pilot shall have kept or been concerned or interested in the same before the first day of *March* one thousand eight hundred and eight, and shall be duly authorized by the corporation, or other authority under which such pilot shall act, to continue in such business or employment); or if any pilot, licensed as aforesaid, shall be convicted of any offence against any law or laws relating to the revenues of customs or excise, or shall be concerned in or shall wilfully connive at any indirect practices or frauds against the revenues of customs or excise, or shall procure, abet, connive at, or participate in any destruction, spoil, or concealment, fraud, exaction, or corrupt practice, relating to ships or vessels, or persons in distress at sea, or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such ships or vessels, or relating to the crew or passengers belonging thereto, or the monies, goods, or chattels of any of them, then and in every such case every pilot shall (over and above all other punishments, mulcts, and penalties for such offences), be adjudged to forfeit his licence, or shall be suspended from acting as a pilot, by and at the discretion of the corporation or other authority, from which such pilots licence was derived.

against the Revenue laws, &c. shall forfeit their licences or be suspended.

LXIX. And be it further enacted, That if any person, suspended or adjudged to have forfeited his license as a pilot, shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel as a pilot, such person shall be liable to all such penalties, to be recovered and applied in like manner and form as are provided by this Act, against any person who shall pilot or conduct any ship or vessel without ever having been licensed as a pilot.

Pilots suspended or adjudged to have forfeited their licences, liable to penalty for acting.

LXX. And be it further enacted, That it shall be lawful for any licensed pilot within the limits of his licence, and the extent of his qualification therein expressed, to supersede in the charge of any ship or vessel any person not licensed to act as a pilot, or not licensed so to act within such limits, or acting beyond the extent of his qualification; and every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits in which such ship or vessel shall actually be, or beyond the extent of his qualification, as expressed in his licence, after any pilot, duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding fifty pounds nor less than twenty pounds.

Licensed pilots may supersede unlicensed ones.

Penalty on unlicensed persons acting as pilots after a proper pilot shall have offered to take charge of the ship.

LXXI. Provided always, and be it further enacted, That for and notwithstanding any thing in this Act contained, any person whatsoever shall and may lawfully, and without being

When unlicensed persons, &c. may act as pilots.

subject to any penalty by this Act imposed, assume or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where and so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance which at the time could be procured.

Penalty on pilots who shall decline to go off to or take charge of vessels, or who shall quit the same.

LXXII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid, who shall, when not actually engaged in his capacity of pilot, refuse or decline or wilfully delay to go off to or on board of or to take charge of any ship or vessel wanting a pilot, and within the limits specified in his licence, and of which he shall be qualified to take charge, upon the usual signal for a pilot being displayed from such ship or vessel, or upon being required so to do by the captain, or by any commissioned or warrant officer of or belonging to such ship or vessel (if the same shall be in His Majesty's service), or by the master, or other person having the command of such ship or vessel, or by any person or persons interested therein as principal or agent (if the same shall not be in His Majesty's service), or upon being required so to do in either of the cases aforesaid, by any officer of the corporation or society to which such pilot shall belong, or by any principal officer of His Majesty's customs (unless in any of the cases aforesaid) it shall be unsafe for such pilot to obey such signal, or comply with such requisition, or he shall be prevented from so doing by illness or other sufficient cause to be shown by him in that behalf; and every pilot licensed or to be licensed as aforesaid, who shall on any frivolous pretext quit any ship or vessel, or decline the piloting thereof, after he has been engaged to pilot the same, or after going alongside thereof, before the service shall have been performed for which he was hired, and without leave of the captain of such ship or vessel (if in His Majesty's service), or of the master or other person having the command of such ship or vessel (if not in His Majesty's service), shall forfeit for every such offence any sum not exceeding one hundred pounds, nor less than ten pounds, and shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed.

Penalty on pilots for employing or requiring the employment of any boat, &c. beyond

LXXIII. And be it further enacted, That in case any pilot, licensed or to be licensed as aforesaid, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of any boat, anchor, cable, hawser or other matter or thing in or for the service or pretended service of such ship or vessel beyond what shall actually and *bonâ fide* be necessary and proper for the use

use thereof, with intent thereby to enhance or increase the charge or expence of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever, then and in every such case the person so offending shall forfeit and pay a sum not exceeding fifty pounds, nor less than ten pounds, and shall also be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom he was licensed.

what is necessary, thereby to increase expence.

LXXIV. And be it further enacted, That in case any pilot, licensed or to be licensed as aforesaid, shall lend his licence to any unlicensed person to assist him in acting or claiming to act as a licensed pilot, or in case such unlicensed pilot, or any person not being a pilot, but acting under pretext or colour of being a plot, shall by drunkenness render himself incapable of conducting any ship or vessel, or shall wilfully or negligently run any ship or vessel on shore, or lose or injure the same, or the tackle or furniture thereof, or shall wilfully and knowingly conduct, lead, decoy, or betray any ship or vessel into danger in any manner not already provided against by any statute or statutes, or shall unnecessarily or improperly cut any cable or cables of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly; or if any such person shall by wilful misrepresentation of any circumstances upon which the safety of any ship or vessel shall appear materially to depend, for the time being, obtain or endeavour to obtain the charge and conduct of any such ship or vessel, then and in every such case the person so offending, or who shall aid in, procure, abet or connive at the committing of any such offence or offences, shall, besides being liable to damages at the suit of the party grieved, forfeit and pay a sum not exceeding one hundred pounds nor less than twenty pounds; and if the person so offending shall be a pilot, he shall also be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom his licence was granted.

Penalty for lending licence, and for drunkenness, and for conducting any vessel into danger, or injuring the same, or obtaining charge thereof by misrepresentation.

LXXV. And whereas the dock master or dock masters appointed by divers dock companies in the port of *London*, under and by virtue of divers Acts of Parliament, have power and authority to direct the mooring and unmooring, moving or removing of ships and other vessels, within certain distances from the entrances out of the river *Thames* into the docks of such companies respectively; be it therefore enacted, That from and after the passing of this Act, if any pilot having the charge or direction of any ship or vessel within such distances from the respective entrances into the said docks respectively from the river *Thames*, and either intended to go into or having recently come out of the docks of the said companies respectively, shall

Penalty on pilots for not obeying the orders of dock masters.

neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot by the said dock master or dock masters respectively, under and by virtue of and agreeably to the powers vested in him and them by any Act or Acts of Parliament, touching or relating to the mooring, unmooring, moving or removing of such ships or vessels so being under the charge or direction of such pilot as aforesaid, then and in every such case, every pilot so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than twenty pounds; and every such pilot shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation, or other authority by whom such pilot was licensed.

How penalties above 20*l.* may be recovered.

LXXVI. And be it further enacted, That all fines, penalties, or forfeitures hereinbefore or hereinafter imposed by this Act, or by any of the bye-laws, rules, orders, regulations, or ordinances hereby directed to remain in force, or hereafter to be made under the authority of this Act, which shall exceed the sum of twenty pounds (the manner of levying whereof shall not by this Act be otherwise expressly provided for), and likewise all fines, penalties or forfeitures imposed as aforesaid (the manner of levying which shall not by this Act be otherwise expressly provided for), in cases where the lowest penalty recoverable not being greater than twenty pounds, and the largest penalty recoverable being greater than twenty pounds, the party prosecuting shall proceed in respect thereof for a sum greater than twenty pounds, with the written consent of the Corporation of Trinity House of *Deptford Strond*, or of the said lord warden or his lieutenant for the time being respectively (as the case may be), shall and may be recovered with full costs of suit, by action of debt, bill, plaint or information in any of His Majesty's courts of record at *Westminster*, to be commenced within twelve calendar months next after such offence or offences shall be committed, or within such other time as is hereinafter in that behalf directed; the venue in which said action, bill, plaint or information, shall and may, at the option of the plaintiff or informant, be laid, and the said action, bill, plaint or information, tried either in the county of *Middlesex* or the city of *London*, or else in such county or place wherein the offence or offences shall have been committed, and no essoign, protection, wager of law, or any more than one imparlance shall be allowed; and in any such case or cases it shall be lawful to sue for the largest penalty or penalties recoverable in that behalf, and the jury giving the verdict shall and may award either such largest penalty or penalties, or any other smaller sum or sums of money, not less than the sum specified as the lowest penalty recoverable in that behalf.

How penalties not ex-

LXXVII. And be it further enacted, That all fines, penalties or forfeitures hereinbefore or hereinafter imposed by this Act, or by

by any of the bye-laws, rules, orders, regulations or ordinances hereby directed to remain in force, or hereafter to be made under the authority of this Act, and which shall not exceed twenty pounds, (the manner of levying whereof shall not by this Act be otherwise expressly provided for); and likewise all fines, penalties or forfeitures imposed as aforesaid (the manner of levying which shall not by this Act be otherwise expressly provided for), in cases where the lowest penalty recoverable, not being greater than twenty pounds, and the largest penalty recoverable being greater than twenty pounds, the party prosecuting shall proceed in respect thereof for any sum not exceeding twenty pounds, with such written consent as aforesaid, shall and may be levied and recovered within six calendar months after the offence or offences committed, or within such other times as is hereinafter in that behalf directed, before any justice or justices of the peace for the county, city, division or place where the offence or offences shall be committed; or if committed by any pilot, then before any justice or justices of the peace for the county, city, division or place aforesaid, or before any justice or justices of the peace, or any magistrate or magistrates of the city, town or port to which such pilot shall belong; or if committed by any owner or master of any ship or vessel, before any justice or justices of the peace for the county, city, division or place where the offence or offences shall have been committed, or before any justice or justices of the peace, or any magistrate or magistrates of the county, city, town or port at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed on any part of the sea from *Orfordness* to the mouth of the river *Thames*, or from *Dungeness* to the mouth of the river *Thames*, or upon the rivers *Thames* or *Medway*, then only before some justice or justices of the peace of the counties of *Kent*, *Surrey*, *Essex* or *Middlesex*, or before some magistrate or magistrates of the city of *London*; and all and every the justice and justices, magistrate and magistrates aforesaid, is and are hereby empowered and required, upon complaint to him or them made, to grant a warrant to bring before him or them such offender or offenders at the time or place in such warrant specified; and if on conviction of the offender or offenders respectively on his her or their confession, or on the evidence of any one or more credible witness or witnesses upon oath, (which oath such justice or justices, magistrate or magistrates, is and are hereby empowered to administer), such fine, penalty or forfeiture shall not be forthwith paid, it shall and may be lawful to and for such justice or justices, magistrate or magistrates, to levy the penalty by distress, and for want of distress to commit every such offender or offenders to the common gaol or house of correction for the county, city or place where such offender or offenders shall be convicted, there to remain without bail or mainprize for any time not exceeding

ceeding 20*l.* may be recovered.

ceeding six calendar months, nor less than twenty-one days, unless such fine, penalty or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid: provided always, that in case the said respective periods of twelve calendar months and six calendar months, or either of them, within which fines penalties or forfeitures are to be sued for as aforesaid, shall in any case or cases elapse and run out before any action or prosecution hereby authorized and directed shall have been commenced for the recovery of such fines penalties or forfeitures; and if it shall in manner hereinafter mentioned be made to appear, as soon after as the circumstances of the case shall reasonably admit, that the commencement of the action or prosecution has been delayed by reason of the absence of any party or parties whether offending or complaining, or by the absence of any necessary witness or witnesses, then upon such circumstances being stated by affidavit in writing, made before any judge of any of His Majesty's courts of record at *Westminster*, it shall thereupon be lawful for any such judge or judges to order or authorize the commencement of such action or prosecution within such further time as such judge shall think fit to limit in that behalf; and in such case the action or actions, prosecution or prosecutions so ordered or authorized shall and may be commenced and prosecuted within the time or respective times so limited, in like manner and with the like effect in all respects as if such prosecutions had been commenced and prosecuted within the said respective periods of twelve months and six months hereby limited.

Justice of any county into which an offender may escape, may endorse the original warrant, which shall authorize the peace officers to execute it.

LXXVIII. And be it further enacted, That in case any person against whom a warrant shall be issued by any justice or justices, magistrate or magistrates, before or after any conviction for any offence against this Act, shall escape, go into, or reside, or be in any other county, riding, division, city, liberty, town, or place, not within the jurisdiction of the justice or justices, magistrate or magistrates, granting such warrant, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place, into which such person shall escape, either before or after conviction, and they and every of them are hereby required upon proof made upon oath of the handwriting of any justice or justices, magistrate or magistrates, granting such warrant, to endorse his or their name or names on such warrant, and the same when so indorsed shall be sufficient authority to all peace officers to execute such warrant in such other county, riding, division, city, town, or place, out of the jurisdiction of the justice or justices granting the said warrant; and any justice or justices respectively, on the offender being apprehended and brought before him or them, within their respective jurisdictions, may proceed to hear and determine the complaint, in the same manner as if it had originally arisen within his or their respective jurisdictions,

jurisdictions, or may direct the offender to be carried, and such offender shall accordingly, in that case, be carried to or before the justice or justices who granted the original warrant, to be dealt with according to law.

Witnesses not appearing may be committed to the house of correction.

LXXIX. And be it further enacted, That if any person who shall be summoned as a witness upon any complaint or information before any justice or justices of the peace, magistrate or magistrates, shall refuse or neglect to appear at the time by such summons appointed, having no just cause for such neglect or refusal, it shall be lawful for such justice or justices, magistrate or magistrates, on proof of such summons having been served, and of a tender of reasonable expences having been made to such person on his being served with such summons, to issue a warrant, under his hand and seal or their hands and seals, to bring such person before him or them; and if on appearance, or on being brought before any justice or justices, magistrate or magistrates, such person shall refuse to be examined on oath concerning the premises, without having some just cause for such refusal, it shall be lawful for such justice or justices, magistrate or magistrates, by warrant under his hand and seal, or their hands and seals, to commit such person to the house of correction of the county, city, division, or place where any such person shall be apprehended, there to remain for any time not exceeding six weeks, nor less than ten days, as any such justice or justices, magistrate or magistrates, shall direct.

Persons convicted of giving false testimony, guilty of perjury.

LXXX. And be it further enacted, That every person who in any examination upon oath, under the provisions of this Act, shall wilfully give false testimony, or a false account of the matter sworn to by such person, shall be liable to be prosecuted for the same by indictment, and if duly convicted of false swearing in the premises, shall be subject and liable to such punishments, disqualifications, and disabilities, as any person would be subject or liable to for wilful and corrupt perjury, in any other case by the laws and statutes of the realm.

Convictions may be drawn up in the following form.

LXXXI. And for the more easy and speedy conviction of offenders against this Act, be it further enacted, That all and every justice and justices of the peace, magistrate or magistrates, before whom any person shall be convicted of any offence against this Act, or against any bye-law, rule, regulation, or order hereby directed to remain in force, or hereafter to be made under the authority hereof, shall and may cause the conviction to be drawn up according to the following form, or in words to the like effect; *videlicet*,

'BE it Remembered, That on the day of
' in the year of our Lord
' *A. B.* is convicted before me [*or* us],
' one [*or* two, *as the case may be*] of His Majesty's justices of
' the peace for the [*here specify the*
' *offence*

'*offence, and the time and place when and where committed, as the case may be,*] contrary to an Act passed in the sixth year of the reign of King *George* the Fourth, intituled, [*here insert the title of this Act*], and I [*or* we] do adjudge that the said [*insert the offender's name*] hath therefore forfeited the sum of [*here insert the penalty*]. Given under my hand and seal [*or* our hands and seals] the day and year first above written.'

And no certiorari, or other writ or process for the removal of any such conviction or any proceedings thereon, into any of His Majesty's Courts of Record at *Westminster*, shall be allowed or granted.

Appeal may be made to the quarter sessions, who may finally determine the matter, and award costs.

LXXXII. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace, magistrate or magistrates before mentioned, of any offence or offences against this Act, or against any bye-law, rule, order, regulation or ordinance hereby directed to remain in force, or hereafter to be made under the authority hereof, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city or place where the matter of appeal shall arise, first giving ten days notice of such appeal to the person or persons appealed against, and of the matter thereof, and within fourteen days next after such notice entering into a recognizance before some justice of the peace for such county, city or place, with sufficient sureties conditioned to try such appeal, and for abiding the determination of the court therein; and such justices so assembled shall, upon due proof of such notice having been given, and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable (and the decision of the said justices therein shall be final, binding and conclusive); and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form only, or be removed by certiorari or any other writ or process whatsoever, into any of His Majesty's Courts of Record at *Westminster* or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding.

Proceedings not to be quashed for want of form, or removed by certiorari.

Application of penalties.

LXXXIII. And be it further enacted, That one-third of all fines or penalties to be levied in pursuance of this Act, or under any bye-law, rule, order, regulation or ordinance hereby directed to remain in force, or hereafter to be made under the authority of this Act, by whomsoever incurred, (save and except such fines or penalties, the application whereof shall by this Act be otherwise expressly provided for), shall go to the person who shall inform or sue for the same, and the remainder of all such fines or penalties shall be carried to and applied to the purposes of the

the said fund belonging to the said Corporation of Trinity House, called *The Pilots Fund*, in case such fines or penalties shall be incurred by pilots licensed by the said corporation, or by any person or persons in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned; and in case such fines or penalties shall be incurred by pilots belonging to the fellowship of the Cinque Ports, or by pilots under any other jurisdictions or authorities, or by any other person or persons in relation to any matters wherein such pilots respectively shall be in anywise concerned, then the remaining two-thirds of such last-mentioned fines or penalties shall be carried to and applied to the purposes of such fund as hath been or shall be created for the relief of such indigent pilots belonging to the said fellowship, or such other jurisdictions or authorities respectively, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity.

Limitation of actions.

LXXXIV. And be it further enacted, That if any suit or action shall be brought or prosecuted against any person or persons for anything done or to be done in pursuance of this Act, in every such case the action or suit shall be commenced within six calendar months next after the fact committed, and not otherwise, and shall be laid or brought in the county, city or place where the cause of action arises, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue not guilty, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time limited for bringing the same, then the jury shall find for the defendant or defendants; and if the plaintiff or plaintiffs shall become nonsuited, or suffer a discontinuance of his or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in other cases of law.

General issue.

Treble costs.

Regulations in any Act relating to pilotage in any river, &c. and which refer to the repealed statutes, to continue in force notwithstanding such repeals.

LXXXV. And be it further enacted, That all Acts of Parliament, and all clauses, provisions, powers, authorities, regulations, penalties and forfeitures contained in any Act, which in any manner relate to the regulation of pilots or pilotage within any river, port or harbour, or within any local limits specified in any such Act, clause or provision, and in which any reference is made to the said Acts passed in the forty-eighth and fifty-second years of the reign of his said late Majesty King *George* the Third as aforesaid, or either of them, or in any manner apply thereto, or vary or alter any of the provisions thereof as to pilots or pilotage within any such limits, shall continue in full force notwithstanding

notwithstanding the repeal of the said Acts of the forty-eighth and fifty-second years aforesaid, and shall be deemed to refer and apply to this Act, and shall be so construed as if the same were particularly referred to in this Act; any thing in this Act to the contrary notwithstanding.

Act not to extend to ships belonging to His Majesty.

LXXXVI. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any ships or vessels belonging to His Majesty, his heirs and suceessors. as to their being compelled to take pilots on board.

Act not to affect the jurisdiction of the court of Loadmanage, or of the High Court of Admiralty.

LXXXVII. Provided always, and be it further enacted, That nothing herein contained shall extend to affect or impede the jurisdiction of the court of Loadmanage, as far as respects the pilots appointed under the authority of the said court; and provided also that nothing in this Act contained shall extend or be construed to extend to affect or impair the jurisdiction of the High Court of Admiralty.

Act not to prejudice right of the city of London.

LXXXVIII. Provided always, and it is hereby further enacted and declared, That nothing in this Act contained shall extend or be construed to extend to prejudice or take away any right, property, authority or jurisdiction of the mayor of the city of *London*, or of the mayor and commonalty and citizens of the city of *London*, to, in and upon the river *Thames* aforesaid.

Act not to affect any districts having separate jurisdictions.

LXXXIX. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to the taking away, abridging, defeating, impeaching, or interrupting of any grants, liberties, franchises, or privileges heretofore granted by any charters or Acts of Parliament to the pilots of the Trinity House of the town of *Kingston-upon-Hull*, or the Trinity House of *Newcastle-upon-Tyne*, or to give any authority to the Corporation of the Trinity House of *Deptford Strond*, within any ports or districts having separate jurisdictions in matters of pilotage, under any Act of Parliament or charter, or to alter or repeal any provisions contained in any Act or Acts of Parliament relating to the pilots of any ports or districts in relation to which particular provision shall have been made in any Act or Acts of Parliament as to the pilots or pilotage, or to the pilotage within the limits prescribed by any Act or Acts of Parliament relating to pilotage for such ports, or to the burthen of vessels navigating to or from such ports.

Provisions of former Acts for preservation of sea marks and beacons to extend to all vessels

XC. And be it further enacted, That all provisions, clauses, penalties, and forfeitures, contained in an Act passed in the eighth year of the reign of Queen *Elizabeth*, or any other Act or Acts made and in force for the preservation of sea-marks and beacons, shall extend and be construed to extend to all vessels duly appointed to exhibit lights therein for the preservation of ships and vessels at sea, and to all persons removing, injuring, or destroying such

such vessels or lights, which offences may be laid and tried in any county in *England*.

appointed to exhibit lights, &c.

XCI. And be it further enacted, That every person who shall ride by, make fast to, or remove, or wilfully run down, or run foul of any vessel, appointed or placed to exhibit lights, or any buoy or beacon belonging to the said Corporation of Trinity House of *Deptford Strond*, or belonging to or placed by any other corporation having lawful authority to place the same, shall, besides being liable to the expence of replacing or making good any damage occasioned thereby, forfeit for every such offence any sum not exceeding fifty pounds, nor less than ten pounds, to be recovered by action of debt, bill, plaint, or information in which no essoign, protection, privilege, wager of law, or more than one imparlance shall be granted or allowed; one-third of which said penalty shall go to the persons who shall inform or sue for the same, and the remainder of which said penalty shall go to the said Corporation of Trinity House of *Deptford Strond*, or other the corporation to which such vessel, buoy, or beacon shall belong, or by which the same shall have been placed as aforesaid, as the case may be, to be applied to the charitable purposes of the said corporations respectively.

Penalty for riding by, &c. such vessels, or any buoy or beacon.

Public Act. s. 92.

Act may be altered or repealed this session. s. 93.

N. B.—The Act is followed by two Schedules, containing Rates of Pilotage, and by the two following Forms of Oath.

Schedule (B.)

OATH to be taken by the Master and Wardens of the Society of Cinque Port Pilots.

'I, *A. B.* do swear, That I will diligently and impartially 'examine and inquire into the capacity and skill of 'in the art of piloting ships and vessels over the flats, and round 'the Long Sand Head, and up the rivers of Thames and Med-'way, and into Ramsgate, Dover, Sandwich, and Margate Har-'bours, and also upon the coasts of Flanders and Holland; and 'will make true and speedy return thereof to the lord warden 'of the Cinque Ports for the time being, or his deputy, without 'favour, affection, fee or reward.

So help me GOD.'

Schedule (C.)

OATH to be taken by Sub-commissioners for Pilotage.

'I, *A. B.* do swear, That I will diligently and impartially 'examine into the capacity and skill of 'in the art of piloting ships and vessels into the roadstead, port, 'or harbour, and upon the coasts following; *videlicet*, [*here describe the limits within which the person examined is intended to 'act as pilot*] and will make true and speedy return thereof to 'the Corporation of Trinity House of Deptford Strond, without 'favour, affection, fee, or reward, other than such fee or reward 'as is allowed by the bye laws or regulations duly established in 'that behalf. So help me GOD.'

N° X.

53 *Geo.* III. *c.* 159.

AN ACT to limit the Responsibility of Ship Owners, in certain Cases.

WHEREAS it is of the utmost consequence and importance to promote the increase of the number of Ships and Vessels belonging to the United Kingdom, registered according to law, and to prevent any discouragement to merchants and others from being interested therein: And whereas it is expedient to amend an Act, made in the seventh year of the reign of his late Majesty King *George* the Second, intituled *An Act to settle how far Owners of Ships shall be answerable for the acts of the Masters or Mariners*; and also another Act, made in the twenty-sixth year of the reign of his present Majesty, intituled, *An Act to explain and amend an Act made in the seventh year of his late Majesty's reign, intituled, 'An Act to settle how far Owners of 'Ships shall be answerable for the acts of Masters or Mariners,' and for giving a further Relief to the Owners of Ships*; and that other provisions should be made in respect thereof; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That no person or persons who is, are, or shall be owner or owners, or part owner or owners of any ship or vessel, shall be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act, neglect, matter or thing done, omitted or occasioned, without the fault or privity of such owner or owners, which may happen to any goods,

7 G. 2. c. 15.

26 G. 3. c. 86.

Owners of ships shall not be liable to make good any damage occasioned without

goods, wares, merchandize, or other things laden or put on board the same ship or vessel, after the first day of *September* one thousand eight hundred and thirteen, or which after the said first day of *September* one thousand eight hundred and thirteen, may happen to any other ship or vessel, or to any goods, wares, merchandize, or other things, being in or on board of any other ship or vessel, further than the value of his or their ship or vessel, and the freight due or to grow due for and during the voyage which may be in prosecution or contracted for at the time of the happening of such loss or damage. their fault, further than the value of their vessels.

II. And be it further enacted, That the value of the carriage of any goods, wares, or merchandize, belonging to the owner or any of the owners of such ship or vessel, and also the hire due or to grow due under or by virtue of any contract, whether made by or on behalf of his Majesty, or by or on the behalf of any other person or persons, or any body politic or corporate whatsoever, except only such hire as in the case of a ship or vessel hired for time, may not begin to be earned until the expiration of six calendar months after the happening of such loss or damage, shall be deemed and taken to be, and shall be considered as freight, within the intent and meaning and for the purposes of this Act, and also of the said Acts of Parliament made in the seventh year of the reign of his late Majesty King *George* the Second, and in the twenty-sixth year of the reign of his present Majesty. Value of the carriage of Goods, &c. to be considered as freight.

III. And be it further enacted, That in case any such loss or damage shall arise or happen, by more than one separate and distinct accident, act, neglect or default, or on more than one occasion in the course or progress of a voyage, or after the end of any voyage, and before the commencement of another voyage, each and every such loss or damage shall be paid, compensated and satisfied according to the provisions of this Act, in such and the same way, and to the same extent, as if no other loss or damage had happened or arisen during the same voyage, or after the end of any voyage and before the commencement of another voyage. Providing for separate losses.

IV. Provided always, and be it further enacted, That nothing herein contained shall lessen or take away any responsibility to which any master or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of his ship or vessel. Act not to take away responsibility of master or mariners of such ships.

V. Provided also, and be it further enacted, That nothing herein contained shall extend, or be construed to extend, to the owner or owners of any lighter, barge, boat or vessel, of any burthen or description whatsoever, used solely in rivers or inland navigation, or any ship or vessel not duly registered according to law. Act not to extend to owners of lighters, &c.

VI. Provided also, and be it further enacted, That nothing in this Actions may be brought for

damage by persons suffering loss though others have sustained loss by the same accident.

this Act contained, shall extend to prevent any action or suit being brought or instituted, or proceeded in, in any court of competent jurisdiction, by any person or persons who shall have suffered any loss or damage within the intent and meaning of this Act, against any owner or part owner of any ship or vessel, notwithstanding any other person or persons may have suffered any loss or damage by the same accident, act, neglect or default, or on the same occasion; but that all such actions and suits shall and may be brought or instituted, and proceeded in, in such manner as the same might have been brought or instituted, or been proceeded in, if this Act had not been made; subject nevertheless to such order as any court may think fit to make, to restrain proceedings in such action or suit, on special circumstances, as justice and equity shall require.

Proceedings in case the value of the ship, &c. is not sufficient to make Compensation for Damages.

VII. And be it further enacted, That if several persons shall suffer any loss or damage in or to their goods, wares, merchandizes, ships, or otherwise, by any means for which the responsibility of any owner or owners is limited by this Act as aforesaid, and the value of the ship or vessel, with all her appurtenances, and the amount of the freight estimated as herein is mentioned, shall not be sufficient to make full compensation to all and every the person and persons suffering such loss and damages, it shall and may be lawful to and for the person or persons liable to make satisfaction for such loss or damage, or any one or more of them, on behalf of himself, herself, or themselves, and the other owner or owners of the same ship or vessel, to exhibit a bill in any court of equity having competent jurisdiction, against all the persons who shall have brought any such action or actions, suit or suits as aforesaid, and all other persons who shall claim to be entitled to any recompence for any loss or damage arising or happening by the same separate and distinct accident, act, neglect or default, or on the same occasion to ascertain the amount of the value of the ship or vessel, appurtenances and freight, and for payment or distribution thereof rateably amongst the several persons claiming recompence as aforesaid, in proportion to the amount of the several losses or damages sustained by such persons so claiming such recompence as aforesaid, according to the rules of equity, and as the case may require: Provided always, that the plaintiff or plaintiffs in such bill shall annex to such bill an affidavit that he, she or they do not directly or indirectly collude with any of the defendants thereto, or with any other owner or owners of the same ship or vessel, or with any other person or persons, but that such bill is filed for the purposes only of justice, and to obtain the benefit of the provisions of this Act; and that the several persons named as defendants to the said bill, are, as the person or persons making such affidavit verily believes, all the persons claiming to be entitled to recompence for loss or damage sustained by the same accident, act, neglect

neglect or default, or on the same occasion; and that all such defendants do claim such recompence, and to be entitled to proportions of the value of such ship or vessel, appurtenances and freight; and that no other person claims to be entitled to any proportion thereof under the provisions of this Act, and that the amount of the value of such ship or vessel, appurtenances and freight, does not exceed a sum to be specified in such affidavit, and that the several claims made by the defendants to such bill, do exceed the amount of the value of such ship or vessel, appurtenances and freight; and the plaintiff or plaintiffs in such bill shall, on filing such bill, apply to the court and obtain an order for liberty to pay into court the account of the value of such ship or vessel, appurtenances and freight, as ascertained by such affidavit, and shall pay the same into court according to such order; and no defendant or defendants to such bill shall be compellable to put in any answer thereto until such value shall have been paid into court as aforesaid, unless the court shall for any special cause think fit to order security to be given for the same, in such manner as the said court shall think fit, either instead of payment thereof into court as aforesaid, or until such court shall make other order to the contrary; and unless such money shall be paid into court as aforesaid, or the said court shall make such order for security as aforesaid, and such security shall be given according to the said order within one month after such bill shall have been filed, such bill shall immediately after the expiration of such month, stand dismissed without any motion for that purpose; and the court shall thereupon order the payment of the costs of the said suit to all the defendants who shall then have appeared to such bill; and in case such security shall be given as aforesaid, and such value shall afterwards be ordered to be paid into court, and the same shall not be so paid within the time to be limited by the court, such bill shall also stand dismissed without motion for that purpose, and the said court shall also order costs to be paid to the defendants as aforesaid; and in case any such bill shall at any time be dismissed after any such value shall have been paid into court, or such security given as aforesaid, such court shall direct the money so paid into court, if any, to be paid to the several claimants, defendants to such bill, who shall appear to the court to be entitled to proportions thereof, in such manner as to such court shall appear to be just, and shall order any security so to be given as aforesaid to be put in suit, and the money to be recovered thereupon to be paid into court and distributed in like manner; and such payments shall be without prejudice to any action or suit which may be brought or instituted by any other person or persons, not party or parties to such bill, for any such loss or damage as aforesaid, although such loss or damage shall have arisen or happened by the same accident, act, neglect or default, or on the same occasion

sion as the losses or damages for which recompence shall be claimed by the parties defendants to such bill, and all such payments as shall be made under the order of the said court shall be without prejudice to the recovery of the costs in any action or suit which shall have been brought by any such defendant or defendants, unless such costs shall be otherwise provided for by the said court.

If the true amount of the value of the vessel, &c. be not paid, the court shall require further Payment, &c.

VIII. Provided always, and be it further enacted, That if it shall appear to the court in which any such bill shall be filed as aforesaid, that the money paid into court, or for which such security shall be given as aforesaid, is not the true amount of the value of such ship or vessel, appurtenances and freight, the said court shall order such further sum of money to be paid into court, or such further security to be given as to the said court shall seem proper; and the said court shall also at any time if the said court shall see fit, order security to be given for the costs of such suit as to the said court shall seem necessary and just; and if such further sum of money shall not be paid, or such further or other security shall not be given as aforesaid within the time to be limited by the said court for that purpose, such bill shall stand dismissed without any order for that purpose; and the said court shall thereupon order the payment of the costs of such suit to the several defendants by the plaintiffs, and give the proper directions for the application of any money paid into court, or due on any security given in such suit to answer the demands of the several defendants in such suit, as to such court shall appear to be just.

In abatement of suits how costs to be paid.

IX. And be it further enacted, That if after any such suit shall have been instituted the same shall become abated or imperfect in the whole or in part, and the same shall not be revived or made perfect within the time to be limited by the court for that purpose, such suit and all proceedings therein shall stand dismissed without any motion for that purpose; and the said court shall order the costs of such suit to be paid to the defendants thereto, or to the representatives of any who shall be then dead; and if the plaintiff or plaintiffs in any such suit, or any of them, shall be then dead, such costs as shall not be otherwise paid shall be a charge on the assets of such deceased plaintiff or plaintiffs, and shall be recoverable as a debt by simple contract.

Court to take measures for ascertaining the value of vessels, &c.

X. And be it further enacted, That the court in which any such bill shall be filed as aforesaid, shall be and is hereby authorized and empowered to take all such measures as to such court shall seem just for ascertaining the value of the ship or vessel, appurtenances, and freight, the amount of the losses or damages claimed by the defendants thereto respectively, and all such matters and things as shall be necessary for the purposes of justice in such suit, and for payment and distribution of the value of such ship or vessel, appurtenances and freight, amongst the several persons

persons entitled thereto, and generally to do therein as shall appear to be just; and the costs of all such proceedings shall be paid by the plaintiff or plaintiffs in such suit, unless such court shall think fit otherwise to order.

Costs to be taxed.

XI. And be it further enacted, That all costs to be paid by the plaintiff or plaintiffs in any such suit in a court of equity as aforesaid shall be taxed and settled as between attorney and client, if the court shall think fit so to order.

No new Bills to be filed but under certain circumstances.

XII. Provided also, and be it further enacted, That if any such bill shall be filed, and shall afterwards be dismissed by reason of any such default of the plaintiff or plaintiffs therein as hereinbefore provided, or under any order of the said court for that purpose, no new bill shall be filed by the same plaintiff or plaintiffs, or his, her, or their representatives, or by any other part owner or part owners of the same ship or vessel, unless the court in which such bill shall have been filed shall order such dismission to be without prejudice to the filing of a new bill, either absolutely or under such conditions as to the said court shall seem just.

Interest of Money paid into Court to belong to the Parties entitled to the principal.

XIII. And be it further enacted, That if any money shall be paid into such court of equity as aforesaid, in respect of the value of any such ship or vessel, appurtenances, or freight, all interest and profit made thereof whilst such money shall remain in court shall be considered as belonging to the parties in such suit, who shall appear to be entitled to the principal money or proportions thereof respectively, and shall be divided and distributed accordingly; and if security shall be given for such value, or any part thereof, the same shall bear interest, and such interest shall be applied in like manner.

Any bill filed by one part owner, to be equally binding on the others.

XIV. And be it further enacted, That if any such bill shall be filed as aforesaid by any part owner or part owners of any ship or vessel, on behalf of himself, herself, or themselves, and the other part owners, such bill shall bind all such other part owners, and their representatives, in the same manner as they would have been bound if parties plaintiffs to such bill; and if after the filing of any such bill any of the plaintiffs or other part owners shall die, the right of action against such part owner so dying, founded on any tort or wrong, shall not thereby be lost, but it shall be lawful to proceed against the respective representatives of the part owners so dying, in the same manner as might have been if such right of action had been founded on contract.

Any court competent to act as court of equity, to be deemed such for purposes of Act.

XV. And be it further enacted, That if any suit for any such loss or damage as aforesaid shall be instituted or depending in any court competent to act as a court of equity for the purposes of this act, such court shall, and is hereby authorized and empowered to proceed in such suit for such purposes, in the same manner, and under the same regulations, and with the same powers as are herein given to courts of equity, so far as the same are applicable to the nature of such court, and the forms of proceedings

ceedings therein, and such court shall use all such means as a court of equity is by this Act empowered to use for the purposes of this Act.

Money paid for Damage how to be accounted for.

XVI. And be it further enacted, That all and every sum and sums of money which shall be paid for or towards or on account of any loss or damage, in respect whereof the responsibility of the owners of any ship or vessel is limited by this Act, or by the said Acts or either of them, or any costs incurred in relation thereto, shall and may be brought into account among the part owners of the same ship or vessel in such and the like manner as money disbursed for the use thereof.

Public Act.

XVII. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without the same being specially pleaded.

N° XI.

6 *Geo.* IV. *c.* 94.

AN ACT to alter and amend an Act for the better protection of the Property of Merchants and others, who may hereafter enter into Contracts or Agreements in relation to Goods, Wares or Merchandize, intrusted to Factors or Agents.

4 G. 4. c. 83.

WHEREAS an Act passed in the fourth year of the reign of His present Majesty, intituled, *An Act for the better Protection of the Property of Merchants and others, who may hereafter enter into Contracts or Agreements in relation to Goods, Wares or Merchandize, intrusted to Factors or Agents*: And whereas it is expedient to alter and amend the said Act, and to make further provisions in relation to such contracts or agreements, as hereinafter provided: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Factors or Agents having Goods or Merchandize in their possession, shall be deemed to be the true Owners, so as to give validity to contracts

That from and after the passing of this Act, any person or persons intrusted, for the purpose of consignment or of sale, with any goods, wares or merchandize, and who shall have shipped such goods, wares or merchandize in his, her, or their own name or names, and any person or persons in whose name or names any goods, wares or merchandize shall be shipped by any other person or persons, shall be deemed and taken to be the true owner or owners thereof, so far as to entitle the consignee or consignees of such goods, wares and merchandize to a lien thereon, in respect of any money or negociable security or securities advanced or given by such consignee or consignees to or for the use of the person or persons in whose name or names such goods, wares or merchandize shall be shipped, or in respect of any money

or

or negociable security or securities received by him, her or them, to the use of such consignee or consignees, in the like manner to all intents and purposes as if such person or persons was or were the true owner or owners of such goods, wares and merchandize; provided such consignee or consignees shall not have notice by the bill of lading for the delivery of such goods, wares or merchandize, or otherwise, at or before the time of any advance of such money or negociable security, or of such receipt of money or negociable security in respect of which such lien is claimed, that such person or persons so shipping in his, her or their own name or names, or in whose name or names any goods, wares or merchandize shall be shipped by any person or persons, is or are not the actual and *bonâ fide* owner or owners, proprietor or proprietors of such goods, wares and merchandize so shipped as aforesaid, any law, usage or custom to the contrary thereof in anywise notwithstanding: Provided also, that the person or persons in whose name or names any such goods, wares or merchandize are so shipped as aforesaid, shall be taken, for the purposes of this Act, to have been intrusted therewith for the purpose of consignment or of sale, unless the contrary thereof shall be made to appear by bill of discovery or otherwise, or be made to appear, or be shown in evidence by any person disputing such fact.

With persons dealing bonâ fide upon the faith of such property.

II. And be it further enacted, That from and after the first day of *October*, one thousand eight hundred and twenty-six, any person or persons intrusted with and in possession of any bill of lading, *India* warrant, dock warrant, warehouse keeper's certificate, wharfinger's certificate, warrant or order for delivery of goods, shall be deemed and taken to be the true owner or owners of the goods, wares and merchandize described and mentioned in the said several documents hereinbefore stated respectively, or either of them, so far as to give validity to any contract or agreement thereafter to be made or entered into by such person or persons so intrusted and in possession as aforesaid, with any person or persons, body or bodies politic or corporate, for the sale or disposition of the said goods, wares and merchandize, or any part thereof, or for the deposit or pledge thereof, or any part thereof, as a security for any money or negociable instrument or instruments advanced or given by such person or persons, body or bodies politic or corporate, upon the faith of such several documents or either of them; provided such person or persons, body or bodies politic or corporate, shall not have notice by such documents or either of them, or otherwise, that such person or persons so intrusted as aforesaid is or are not the actual and *bonâ fide* owner or owners, proprietor or proprietors of such goods, wares or merchandize so sold or deposited or pledged as aforesaid; any law, usage or custom to the contrary thereof in anywise notwithstanding.

Persons in possession of bills of lading, &c. to be the owner so far as to make valid contracts.

No person to acquire a security upon goods in the hands of an agent for an antecedent debt, beyond the amount of the agent's interest in the goods.

III. Provided always, and be it further enacted, That in case any person or persons, body or bodies politic or corporate, shall, after the passing of this Act, accept and take any such goods, wares or merchandize in deposit or pledge from any such person or persons so in possession and intrusted as aforesaid, without notice as aforesaid, as a security for any debt or demand due and owing from such person or persons so intrusted and in possession as aforesaid, to such person or persons, body or bodies politic or corporate, before the time of such deposit or pledge, then and in that case such person or persons, body or bodies politic or corporate, so accepting or taking such goods, wares or merchandize in deposit or pledge, shall acquire no further or other right, title, or interest in or upon or to the said goods, wares or merchandize, or any such document as aforesaid, than was possessed, or could or might have been enforced by the said person or persons so possessed and intrusted as aforesaid, at the time of such deposit or pledge as a security as last aforesaid; but such person or persons, body or bodies politic or corporate, so accepting or taking such goods, wares or merchandize in deposit or pledge, shall and may acquire, possess, and enforce such right, title or interest as was possessed and might have been enforced by such person or persons so possessed and intrusted as aforesaid; any rule of law, usage, or custom to the contrary notwithstanding.

Persons may contract with known Agents in the ordinary course of business, or out of that course if within the agent's authority.

IV. And be it further enacted, That from and after the first day of *October* one thousand eight hundred and twenty-six, it shall be lawful to and for any person or persons, body or bodies politic or corporate, to contract with any agent or agents, intrusted with any goods, wares or merchandize, or to whom the same may be consigned, for the purchase of any such goods, wares and merchandize, and to receive the same of and pay for the same to such agent or agents; and such contract and payment shall be binding upon and good against the owner of such goods, wares and merchandize, notwithstanding such person or persons, body or bodies politic or corporate, shall have notice that the person or persons making and entering into such contract, or on whose behalf such contract is made or entered into, is an agent or agents; provided such contract and payment be made in the usual and ordinary course of business, and that such person or persons, body or bodies politic or corporate, shall not, when such contract is entered into or payment made, have notice that such agent or agents is or are not authorized to sell the said goods, wares and merchandize, or to receive the said purchase money.

Persons may accept and take goods, &c. in pledge from known agents; but

V. And be it further enacted, That from and after the passing of this Act, it shall be lawful to and for any person or persons, body or bodies politic or corporate, to accept and take any such goods, wares or merchandize, or any such document as aforesaid, in deposit or pledge from any such factor or factors, agent or agents, notwithstanding such person or persons, body or bodies politic

politic or corporate, shall have such notice as aforesaid, that the person or persons making such deposit or pledge is or are a factor or factors, agent or agents; but then and in that case such person or persons, body or bodies politic or corporate, shall acquire no further or other right, title or interest in or upon or to the said goods, wares or merchandize, or any such document as aforesaid, for the delivery thereof, than was possessed or could or might have been enforced by the said factor or factors, agents or agents, at the time of such deposit or pledge as a security as last aforesaid; but such person or persons, body or bodies politic or corporate, shall and may acquire, possess, and enforce such right, title or interest as was possessed and might have been enforced by such factor or factors, agent or agents, at the time of such deposit or pledge as aforesaid; any rule or law, usage or custom to the contrary notwithstanding.

in that case shall acquire no further interest than was possessed by such agent at the time of such pledge.

VI. Provided always, and be it enacted, That nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true owner or owners, or proprietor or proprietors, of such goods, wares or merchandize, from demanding and recovering the same from his, her or their factor or factors, agent or agents, before the same shall have been so sold, deposited, or pledged, or from the assignee or assignees of such factor or factors, agent or agents, in the event of his, her or their bankruptcy; nor to prevent such owner or owners, proprietor or proprietors, from demanding or recovering of and from any person or persons, body or bodies politic or corporate, the price or sum agreed to be paid for the purchase of such goods, wares or merchandize, subject to any right of set-off on the part of such person or persons, body or bodies politic or corporate, against such factor or factors, agent or agents; nor to prevent such owner or owners, proprietor or proprietors, from demanding or recovering of and from such person or persons, body or bodies politic or corporate, such goods, wares or merchandize so deposited or pledged, upon repayment of the money, or on restoration of the negociable instrument or instruments so advanced or given on the security of such goods, wares or merchandize as aforesaid, by such person or persons, body or bodies politic or corporate, to such factor or factors, agent or agents; and upon payment of such further sum of money, or on restoration of such other negociable instrument or instruments (if any) as may have been advanced or given by such factor or factors, agent or agents, to such owner or owners, proprietor or proprietors, or on payment of a sum of money equal to the amount of such instrument or instruments; nor to prevent the said owner or owners, proprietor or proprietors, from recovering of and from such person or persons, body or bodies politic or corporate, any balance or sum of money remaining in his, her or their hands, as the produce of the sale of such goods, wares or merchandize, after deducting thereout the amount of the money, or negociable

Right of the true owner to follow his goods while in the hands of his agent or of his assignee, in case of Bankruptcy, or to recover them from a third person, upon paying his advances secured upon them.

In case of bankruptcy of factor, the Owner of Goods so pledged and redeemed shall be

held to have discharged pro tanto the debt due from him to bankrupt.

instrument or instruments, so advanced or given upon the security thereof as aforesaid: Provided always, That in case of the bankruptcy of any such factor or agent, the owner or owners, proprietor or proprietors of the goods, wares and merchandize so pledged and redeemed as aforesaid, shall be held to have discharged *pro tanto* the debt due by him, her or them to the estate of such bankrupt.

Agents fraudulently pledging the goods of their principals deemed guilty of a Misdemeanor;

VII. And whereas it is expedient to prevent the improper deposit or pledge of goods, wares or merchandize, or the documents relating to such goods, wares or merchandize, intrusted or consigned as aforesaid to factors or agents; be it therefore enacted, That if any such factor or agent, at any time from and after the said first day of *October* one thousand eight hundred and twenty-six, shall deposit or pledge any goods, wares or merchandize, intrusted or consigned as aforesaid to his or her care or management, or any of the said several documents so possessed or intrusted as aforesaid, with any person or persons, body or bodies politic or corporate, as a security for any money or negociable instrument or instruments borrowed or received by such factor or agent, and shall apply or dispose thereof to his or her own use, in violation of good faith, and with intent to defraud the owner or owners of any such goods, wares or merchandize, every person so offending, in any part of the United Kingdom, shall be deemed and taken to be guilty of a misdemeanor, and being convicted thereof according to law, shall be sentenced to transportation for any term not exceeding fourteen years, or to receive such other punishment as may by law be inflicted on persons guilty of a misdemeanor, and as the court before whom such offender may be tried and convicted shall adjudge.

may be transported not exceeding fourteen years, &c.

Not to extend to cases in which the Agent has not made the goods a security for any sum beyond the extent of his own lien.

Acceptances of bills by an Agent not to create a lien so as to excuse the pledge, unless the bills are paid when due.

VIII. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to subject any person or persons to prosecution, for having deposited or pledged any goods, wares or merchandize, so intrusted or consigned to him, her or them, provided the same shall not be made a security for or subject to the payment of any greater sum or sums of money than at the time of such deposit or pledge was justly due and owing to such person or persons from his, her or their principal or principals: Provided nevertheless, that the acceptance of bills of exchange by such person or persons drawn by or on account of such principal or principals, shall not be considered as constituting any part of such debt so due and owing from such principal or principals within the true intent and meaning of this Act, so as to excuse the consequence of such a deposit or pledge, unless such bills shall be paid when the same shall respectively become due.

Act not to extend to Partners not being

IX. Provided also, and be it further enacted, That the penalty by this Act annexed to the commission of any offence intended to be guarded against by this Act, shall not extend or be construed

strued to extend to any partner or partners, or other person or persons of or belonging to any partnership, society or firm, except only such partner or partners, person or persons, as shall be accessary or privy to the commission of such offence; any thing herein contained to the contrary in anywise notwithstanding. privy to the offence.

X. Provided also, and be it further enacted, That nothing in this Act contained, nor any proceeding, conviction or judgment, to be had or taken thereupon, shall hinder, prevent, lessen or impeach, any remedy at law or in equity, which any party or parties aggrieved by any offence against this Act might or would have had or have been entitled to against any such offender if this Act had not been made, nor any proceeding, conviction or judgment, had been had or taken thereupon; but nevertheless, the conviction of any offender against this Act shall not be received in evidence in any action at law or suit in equity against such offender: And further, that no person shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act, matter or thing done by him, if he shall at any time previously to his being indicted for such offence have disclosed any such matter or thing on oath, under or in consequence of any compulsory process of any court of law or equity, in any action, suit or proceeding, in or to which he shall have been a party, and which shall have been *bonâ fide* instituted by the party aggrieved by the act, matter or thing, which shall have been committed by such offender aforesaid. Act not to lessen any remedy at law or equity which the party aggrieved may be entitled to adopt

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N° XII.

STATUTES RELATING TO SALVAGE.

12 *Anne, Stat.* 2. *c.* 18.

AN ACT for the preserving all such Ships, and Goods thereof, which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions.

'WHEREAS by an Act made in the third year of the reign of King *Edward* the First, concerning wrecks at sea, it is enacted, that where a man, a dog or a cat, escape quick out of the ship, that such ship, nor barge, nor any thing in them, shall be adjudged a wreck, but the goods shall be saved, and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished within his keeping, within a year and a day, they shall be restored to him, without delay, and if not, they shall remain to the king, or to such others to 3 Ed. 1. c. 4.

'whom wreck belongeth; and he that otherwise doth, and thereof 'be attainted, shall be awarded to prison, and make fine at the 'king's will: And whereas by another Act made in the fourth 'year of the reign of the said king *Edward* the First, [intituled, '*De officio Coronatoris*], concerning the wreck of the sea, it is 'enacted, that wheresoever it be found, if any lay hands of it, 'he shall be attached by sufficient pledges, and the price of the 'wreck shall be valued, and delivered to the town: And whereas 'great complaints have been made by several merchants, as well 'her Majesty's subjects, as foreigners trading to and from this 'kingdom, that many ships of trade, after all their dangers at 'sea escaped, have unfortunately, near home, run on shore, or 'been stranded on the coasts thereof; and that such ships have 'been barbarously plundered by her Majesty's subjects, and their 'cargoes embezzled, and when any part thereof has been saved, 'it has been swallowed up by exorbitant demands for salvage, to 'the great loss of her Majesty's revenue, and to the much greater 'damage of her Majesty's trading subjects:' For remedy whereof,

4 Ed. 1. stat. 2.

Sheriffs, mayors, &c. and custom-house officers to summon men to assist ships in distress.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the sheriffs, justices of the peace of of every county, or county of a city or town, and also all mayors, bailiffs, and other head officers of corporations and port-towns near adjoining to the sea, and all constables, headboroughs, tythingmen, and officers of the customs in all and every such places, shall, upon application made to them, or any of them, by or on the behalf of any commander or chief officer of any ship or vessel of any of her Majesty's subjects, or others, being in danger of being stranded or run on shore, or being stranded or run on shore, are hereby empowered and required to command the constables of the several ports within her Majesty's dominions, nearest to the sea-coasts where any such ship or vessel shall be in danger as aforesaid, to summon and call together as many men as shall be thought necessary to the assistance and for the preservation of such ship or vessel, so in distress as aforesaid,

All ships to assist,

and their cargoes; and that if there shall be any ship or vessel, either man of war or merchants ship, belonging to her Majesty, or any of her subjects, riding at anchor near the place where such ship or vessel is in distress or danger as aforesaid, the officers of the customs, and constables above-mentioned, or any of them, are hereby empowered and required to demand of the superior officers of such ship or vessel, so riding at anchor as aforesaid, assistance by their boats, and such hands as they can conveniently spare, for the said service and preservation of the said ship or vessel, so in distress as aforesaid; and that in case such superior officer of such ship or vessel, riding at anchor as aforesaid, shall refuse or neglect to give such assistance, he shall forfeit for the same

same the sum of one hundred pounds, to be recovered by the superior officer of the said ship or vessel, so in distress as aforesaid, together with their costs of suit, in any of her Majesty's courts of record, by action, debt, bill, plaint, or information, wherein no essoign, wager of law, or protection shall be allowed.

on forfeiture of 100 *l.*

II. 'And, for the encouragement of such persons as shall give 'their assistance to such ships or vessels, so in distress as aforesaid:' Be it further enacted, That the said collectors of the customs, and the master or commanding officer of any ships or vessels, and all others who shall act or be employed in the preserving of any such ship or vessel, in distress as aforesaid, or their cargoes, shall, within *thirty* days after the service performed, be paid a reasonable reward for the same, by the commander, master, or other superior officer, marines or owners of the ship or vessel, so in distress as aforesaid, or by the merchant, whose ship, vessel, or goods shall be so saved as aforesaid; and in default thereof, the said ship, vessel, or goods, so saved as aforesaid, shall remain in the custody of such officer of the customs, or his deputy, until such time that all charges shall be paid, and until the said officer of the customs, or his deputy, and the said master or other officer of the ship or vessel, and all others so employed as aforesaid, shall be reasonably gratified for their said assistance and trouble, or good security given for that purpose to the satisfaction of the several parties that are to receive the same; and that in case, after such salvage, the commander or other superior officer, mariners or owners of such ship or vessel so saved as aforesaid, or merchant whose goods shall be so saved as aforesaid, shall disagree with the said officer of the customs, or his deputy, touching the monies deserved by any of the persons so employed as aforesaid, it shall be lawful for the commander of such ship or vessel so saved, or the owner of the goods, or the merchant interested therein, and also for the said officer of the customs, or his deputy, to nominate *three* of the neighbouring justices of the peace, who shall thereupon adjust the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of the said ship, vessel or goods; and such adjustments shall be binding to all parties, and shall be recoverable in an action at law, to be brought in any of her Majesty's courts of record, by the respective persons to whom the same shall be allotted by the said justices of peace; and in case it shall happen that no persons shall appear to make his claim to all or any of the goods that shall be saved, that then and in such case the chief officer of the customs of the nearest port to the place where the said ship or vessel was so in distress as aforesaid, shall apply to *three* of the nearest justices of the peace, who shall put him or some other responsible person in possession of the said goods, such justices of peace taking an account in writing of the said goods, to be signed by such officer of the customs;

Reasonable salvage to be made. By 5 Geo. 1. c. 11. s. 13. goods saved from stranded ships are to pay custom.

Three justices to adjust the quantum,

Goods not claimed in 12 months, to be sold,

customs; and if the said goods shall not be legally claimed within the space of twelve months next ensuing, by the rightful owner thereof, then public sale shall be made thereof, and if perishable goods, forthwith to be sold, and after all charges deducted, the residue of the monies arising by such sale, with a fair and just account of the whole, shall be transmitted to her Majesty's Exchequer, there to remain for the benefit of the rightful owner when appearing, who upon affidavit or other proof made of his or their right or property thereto, to the satisfaction of one of the barons of the coif of the Exchequer, shall, upon his order, receive the same out of the Exchequer.

and the monies transmitted into the Exchequer, &c.

III. And it is hereby also enacted, That if any person or persons whatsoever, besides those empowered by the said officer of the customs, or his deputy, and the constables as aforesaid, shall enter or endeavour to enter on board any such ship or vessel, so in distress as aforesaid, without the leave or consent of the commander, or other superior officer of the said ship, or of the said officer of the customs, or his deputy, or of the said constable, or some or one of them employed for the service and preservation of the said ship or vessel, as aforesaid; or in case any person shall molest him, them, or any of them, in the saving of the said ship, vessel or goods, or shall endeavour to impede or hinder the saving of any such ship, vessel or goods, or when any such goods are saved, shall take out or deface the marks of any such goods, before the same shall be taken down in a book or books for that purpose provided by the commander or ruling officer, and the first officer of the customs as aforesaid, such person or persons shall, within the space of twenty days, make double satisfaction to the party grieved, at the discretion of the two next justices of peace, or in default thereof, shall by such justices of peace be sent to the next house of correction, where he shall continue and be employed in hard labour by the space of twelve months then next ensuing; and that it shall be lawful for any commander or superior officer of the said ship or vessel, so in distress as aforesaid, or for the said officer of the customs, or constables on board the same ship or vessel, to repel by force any such person or persons as shall, without such leave or consent from the said commander or superior officer, or the said officer of the customs, or his deputy, or such constables, as aforesaid, press on board the said ship or vessel, so in distress, as aforesaid, and thereby molest them in the preservation of the said ship or vessel, so in distress, as aforesaid.

Persons entering ships without leave,

or hindering the saving the ship, to make double satisfaction.

Masters may repel pressers into the ship.

IV. And it is hereby likewise enacted, That in case any goods shall be found upon any person or persons, that were stolen or carried off from any such ship or vessel, so in distress as aforesaid, he, she or they, on whom such goods shall be found, shall immediately, upon demand, deliver the same to the owner thereof, or to such person by such owner authorized to receive the same;

Goods carried off, to be immediately delivered up.

or

or in default thereof, shall be liable to pay treble the value of such goods, to be recovered by such owner in an action at law to be brought for the same. Penalty treble the value.

V. And it is hereby moreover enacted, That if any person or persons shall make or be assisting in the making, any hole in the bottom, side, or any other part of any ship or vessel, so in distress as aforesaid, or shall steal any pump belonging to any ship or vessel, so in distress as aforesaid, or shall be aiding or abetting in the stealing such pump, as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of felony, without any benefit of his, her or their clergy. Making holes in the ship, &c. felony.

VI. And be it further enacted by the authority aforesaid, That if any action, suit, or information, shall be commenced or prosecuted against any person or persons, for any thing that he or they shall do, or cause to be done, in pursuance of this Act, and executing any of the powers and authorities, or any of the orders or directions therein mentioned, all and every person and persons, so sued in any court whatsoever, shall and may plead the general issue, and give this Act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit, or forbear prosecution, or discontinue the suit, or if a verdict shall pass against him, or judgment be given against him upon a demurrer, then in any of the said cases the defendant or defendants shall recover full costs, for which he and they shall have the like remedy, as where costs by law are awarded; and this Act shall be taken and allowed in all courts within this kingdom as a Public Act, and all Judges and Justices are hereby required to take notice thereof as such without special pleading of the same. General issue. Public Act.

VII. Provided nevertheless, if any officer of the customs, or his deputy, so empowered as above, shall, by fraud or wilful neglect, abuse the trust so hereby reposed in him as aforesaid, and shall be convicted thereof in due form of law, such officer, or his deputy, shall respectively forfeit treble damages to the party grieved, to be recovered in any action or suit to be brought in any Court of Record, and shall from thenceforth be fully disabled and rendered incapable of the same, or any other employment relating to the said customs. Custom-house officer abusing his trust, to forfeit treble damages, and disabled.

VIII. And it is hereby further enacted, That this Act, and the several clauses herein contained, shall take effect from and after the first day of *August* in the year of our Lord one thousand seven hundred and fourteen; and that, for the better observing of the same, this Act shall be read four times in the year in all the parish churches and chapels of every sea port town, and upon the sea coast in this kingdom, upon the Sundays next before *Michaelmas-day*, *Christmas-day*, *Lady-day*, and *Midsummer-day* in the morning, immediately after the prayers, and before the sermon. Act to commence 1st Aug. 1714. and to be read four times in the year on Sundays in sea-port towns.

IX. Provided

Claims to wrecks saved.

IX. Provided always, and it is hereby enacted, That neither this Act, nor any thing herein contained, shall any ways extend to deprive, or any ways prejudice her royal Majesty, her heirs or successors, or any claiming under them, or any of them, or any patentee or grantee of the crown, or any lord or lords of any manor or manors, or other person whatsoever, of or in relation to any right which they, or any of them respectively have, or shall have, or lawfully may claim to any wreck or wrecks, or any goods that are or shall be floatsam, jetsam, or lagan, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this Act had never been made.

Continuation.

X. Provided, that this Act shall continue in force for the space of three years, and from thence to the end of the next session of Parliament, and no longer.

[Made perpetual by 4 *Geo.* 1. c. 12.]

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26 *Geo.* II. *Cap.* 19.

AN ACT for enforcing the Laws against Persons who shall steal or detain Shipwrecked Goods; and for the Relief of Persons suffering Losses thereby.

'WHEREAS notwithstanding the good and salutary laws now 'in being against plundering and destroying vessels in distress, 'and against taking away shipwrecked, lost or stranded goods, 'many wicked enormities have been committed, to the disgrace 'of the nation, and to the grievous damage of merchants and 'mariners of our own and other countries:' For remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any person or persons shall plunder, steal, take away or destroy any goods or merchandize, or other effects, from or belonging to any ship or vessel of his Majesty's subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded or cast on shore in any part of his Majesty's dominions, (whether any living creature be on board such vessel or not) or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony, without benefit of clergy.

Persons convicted of plundering shipwrecked goods, &c. or of obstructing the escape of any person from a wreck, or of putting out false lights, to suffer death without clergy.

II. Provided always, and be it enacted by the authority aforesaid, That when goods or effects of small value shall be stranded,

Where goods of

lost

lost or cast on shore, and shall be stolen without circumstances of cruelty, outrage or violence; then and in such cases, it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted, shall suffer such punishment as the laws in cases of petit larceny do enjoin or require.

small value shall be stolen without any circumstances of cruelty, the offender may be indicted for petit larceny.

III. And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of his Majesty's Justices of the Peace, upon information made before him or them upon oath (which oath all Justices are hereby empowered to administer) of any part of the cargo or effects whatsoever belonging to any ship or vessel lost or stranded upon or near the coasts aforesaid, being unlawfully carried or conveyed away, or concealed in any house, out-house, barn or other place, or of some reasonable cause of suspicion thereof, to issue his or their warrant or warrants for the searching of such house, out-house, barn or other place, as in other cases of stolen goods: And if the same shall be found in such house, out-house, barn or other place or places, or upon or in the custody or possession of any person or persons not legally authorized or entitled to keep and withhold the same; and the owner or occupier of such house, out-house, barn, or other place, or the person or persons upon whom, or in whose custody or possession the same shall be found, shall not immediately, upon demand, deliver the same to the lawful owner or owners thereof, or to such other person or persons as shall be lawfully authorized to demand the same; or shall not give a good account, to the satisfaction of the said Justice or Justices, how he, she or they came by or became possessed thereof; it shall and may be lawful to and for such Justice or Justices, upon proof of such refusal, and he and they is and are hereby required to commit the said offender or offenders to the common gaol for the space of six months, or until he, she or they shall have paid to such lawful owner or owners, or to the person or persons lawfully authorized to receive the same, treble the value of the goods or things so by him, her or them, unlawfully detained.

Justices upon information of shipwrecked goods being stolen, or concealed, to issue search warrants;

and the persons in whose custody the goods shall be found, not giving a satisfactory account to be committed for six months, or until payment of treble value.

IV. And be it further enacted by the authority aforesaid, That if any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded or cast on shore as aforesaid, and unlawfully taken away, or reasonably suspected so to have been; then and in every such case it shall be lawful for the person or persons to whom the same shall be offered for sale, or any officer of the customs or excise, or any constable, headborough or tythingman, or other peace officer, to stop, take and seize the said goods and effects; and that he or they shall, with all convenient speed, carry the same, or give notice of such seizure to some one or more of his Majesty's justice or justices of the peace; and if the person or persons who shall have offered the said goods or effects to sale, or some other person or

Goods offered to sale, suspected to be shipwrecked, to be stopt,

and notice to be given to a Justice;

and the person offering the same

not making out his property;

or persons on his, her or their behalf, shall not appear before the said justice within ten days next after such seizure, and make out, to the satisfaction of the said justice, the property of the said goods or effects to be in him, her or them, or in the person or persons by whom he, she or they was or were employed to sell the same; then the said goods or effects shall, by order of the said justice, be forthwith delivered over to or for the use of the rightful owner or owners thereof, upon payment of a reasonable reward for such seizure (to be ascertained by the said justice) to the person who seized the same; and such justice shall and may commit the person or persons who shall so have offered or exposed the said goods or things to sale as aforesaid, to the common gaol for the space of six months, or until he, she or they shall have paid to such lawful owner or owners, or to the person or persons lawfully authorized to receive the same, treble the value of the said goods or effects so by him, her or them, unlawfully offered to sale as aforesaid.

the goods to be returned to the owner,

and the offender to be committed for six months, or till payment of treble value.

V. And be it further enacted by the authority aforesaid, That in case any person or persons not employed by the master, mariners or owners, or other persons lawfully authorized in the salvage of any ship or vessel, or the cargo or provision thereof, shall, in the absence of persons so employed or authorized, save any such ship, vessel, goods or effects, and cause the same to be carried, for the benefit of the owners or proprietors, into port, or to any near adjoining Custom-house or other place of safe custody, immediately giving notice thereof to some Justice of the Peace, magistrate, or custom-house or excise officer, or shall discover to any such magistrate or officer where any such goods or effects are wrongfully bought, sold or concealed, then such person or persons shall be entitled to a reasonable reward for such services, to be paid by the masters or owners of such vessels or goods, and to be adjusted, in case of disagreement about the *quantum*, in like manner as the salvage is to be adjusted and paid by virtue of the statute made in the twelfth year of the reign of her late Majesty Queen *Anne*, intituled, *An Act for the preserving all such ships and goods thereof which have happened to be forced on shore, or stranded upon the coasts of this kingdom, or any other of her Majesty's dominions*, or else in the manner hereinafter prescribed, as the case shall require. *

Persons who shall save, and carry any vessel or goods into port, &c. for the benefit of the owners, and give notice thereof; or who shall discover where such goods are concealed, entitled to the reward; and the quantum, in case of disagreement, is to be adjusted according to 12 Ann. stat. 2. c. 18.

VI. And be it further enacted by the authority aforesaid, That for the better ascertaining the salvage to be paid in pursuance of this present Act, and the Act before-mentioned, and for the more effectual putting the same Acts in execution, the Justice of the Peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest to the place where any ship, goods or effects shall

Where any vessel or effects shall be stranded, public notice to be given for a meeting of

* This section is repealed by 6th Geo. 4. c. 105. s. 100. But see ante. p. 408, note (*s*).

shall be stranded or cast away, shall forthwith give public notice for a meeting to be held as soon as possible of the sheriff or his deputy, the Justices of the Peace, mayors, or other chief magistrates of towns corporate, coroners and commissioners of the land-tax, or any five or more of them, who are hereby required and empowered to give aid in the execution of this and the said former Act, and to employ proper persons for the saving of ships in distress, and such ships, vessels and effects, as shall be stranded or cast away; and also to examine persons upon oath touching or concerning the same, or the salvage thereof, and to adjust the *quantum* of such salvage, and distribute the same among the persons concerned in such salvage, in case of disagreement among the parties, or the said persons; and that every such sheriff, justice of the peace, mayor, chief magistrate, coroner, lord of a manor, under sheriff, or commissioner of the land tax, attending and acting at such meeting, shall be paid four shillings a day for his expences in such attendance out of the goods and effects saved by their care or direction.

the sheriff, justices and magistrates, &c.

who are to aid in saving the vessel and goods, &c.

and to adjust the salvage;

4*s.* a day allowed for their attendance.

VII. Provided always, and be it further enacted by the authority aforesaid, That if the charges and rewards for salvage, directed to be paid by the said Act of the twelfth year of the reign of her said late Majesty Queen *Anne*, and by this present Act, shall not be fully paid, or sufficient security given for the same within forty days next after the said services performed, then and in such case it shall be lawful for the officer of the customs concerned in such salvage, to borrow or raise so much money as shall be sufficient to satisfy and pay such charges and rewards, or any part thereof then remaining unpaid, or not secured as aforesaid, by or upon one or more bill or bills of sale, under his hand and seal, of the ship or vessel, or cargo saved, or such part thereof as shall be sufficient, redeemable nevertheless upon payment of the principal sum so borrowed, and interest for the same after the rate of four pounds *per centum per annum*.

If the salvage be not paid, the officer of the customs may raise the same by a bill of sale of the vessel or cargo; which may be redeemed, upon payment of principal and interest.

VIII. And be it further enacted by the authority aforesaid, That if oath shall be made before any magistrate, lawfully empowered to take the same, of any such plunder or theft, and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county, riding, or division wherein such fact shall be committed, or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship, contrary to the aforesaid Act made in the twelfth year of the reign of her said late Majesty Queen *Anne*, and the examination in writing thereupon taken shall be delivered to such clerk of the peace, or his deputy; then such clerk of the peace shall cause the offender or offenders in any of the said cases to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if

Where oath shall be made of plunder or theft, or of breaking a ship, contrary to 12 Ann. st. 2. c. 18. and the examination shall be delivered to the clerk of the peace, he is to prosecute the offender;

and the charges to be paid by the treasurer of the county; clerk of the peace neglecting to prosecute, forfeits 100*l*.

if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecutions by the clerk of the peace shall be paid by the treasurer of the county, riding or division where the fact shall be committed, to such amount as the Justices of the Peace in their general or quarter sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner, he shall forfeit one hundred pounds for every such offence, to any person or persons who shall sue for the same by action of debt, bill, plaint or information, in any of his Majesty's courts of record at *Westminster*; in which action no essoign, protection, wager of law, or more than one imparlance shall be allowed.

Officers for putting this and 12 Ann. st. 2. c. 18. in execution.

IX. And be it further enacted by the authority aforesaid, That the commissioners of the land tax, the deputy sheriff, the coroner, and the officers of excise in each county, riding and division, shall be proper officers for putting in execution this present Act, and the said Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, together with those therein respectively named for that purpose.

3 Geo. 1. c. 13.

X. 'And whereas by an Act made in the third year of the 'reign of his late Majesty king *George* the First, intituled, *An 'Act for the better regulating of Pilots for the conducting of 'Ships and Vessels from Dover, Deal, and the Isle of Thanet, up 'the Rivers of Thames and Medway*, it is enacted, That the 'Lord Warden of the Cinque Ports for the time being shall 'nominate and appoint, by an instrument under his hand and 'seal, three or more substantial persons in each of the Cinque 'Ports, two ancient towns and their members, to adjust and 'determine, within the space of twelve hours, differences which 'shall or may arise within the jurisdiction of the Cinque Ports 'relating to the salvage of anchors and cables from which vessels 'shall or may be forced by extremity of weather:' Now it is hereby enacted, That the lord warden of the Cinque Ports for the time being, and the lieutenant of *Dover Castle* for the time being, and the deputy warden of the Cinque Ports for the time being, and the judge official and commissary of the court of Admiralty of the Cinque Ports, two ancient towns, and the members thereof, for the time being, and all and every of them, and all and every other person and persons appointed or to be appointed by the lord warden of the Cinque Ports for the time being, pursuant to the said Act made in the third year of his late Majesty's reign, shall be the persons to put in execution, within the liberty and jurisdiction of the Cinque Ports, two ancient towns and their members, all the powers and authorities given and granted in and by this Act, and in and by the beforementioned Act of Parliament made in the twelfth year of her said late Majesty Queen *Anne*; and also in and by the said Act made

Officers for putting this and 12 Ann. in execution within the liberty of the Cinque Ports, &c.

made in the fourth year of the reign of his late Majesty king *George* the First; and also shall and may execute, perform and do, within the jurisdictions aforesaid, all the acts, matters, and things contained in this and the before mentioned statutes, in like and as full and ample manner, to all intents and purposes, as any justice or justices of peace, or any other person or persons, are by this and the said Acts appointed or authorized to do in any other part of the kingdom.

Persons convicted of assaulting any magistrate or officer, &c. in the salvage of any vessel or goods, to be transported for seven years.

XI. And be it further enacted by the authority aforesaid, That if any sheriff or his deputy, justice of the peace, mayor or other magistrate, coroner, lord of a manor, commissioner of the land-tax, chief constable or petty constable, or other peace officer, or any custom-house or excise officer, or other person lawfully authorized, shall be assaulted, beaten and wounded, for or on account of the exercise of his or their duty, in or concerning the salvage or preservation of any ship or vessel in distress, or of any ship or vessel, goods or effects, stranded, wrecked, or cast on shore, or lying under water, in any of His Majesty's dominions, then any person or persons so assaulting, beating and wounding, shall, upon trial and conviction, by indictment at the assizes, or general gaol-delivery, or at the general or quarter sessions for the county, riding or division, where such offence shall be committed, be transported for seven years to some of His Majesty's colonies in *America*, and shall be subject to such subsequent punishment, in case of return before that time, as other persons under sentence of transportation are by the law subjected unto.

Justice in the absence of the sheriff may take a sufficient force to repress violence, &c.

XII. And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of His Majesty's justices of the peace, in case of need, and in the absence of the high sheriff, to take sufficient power of the county, to repress all unjust violence, and duly to enforce the execution of this Act.

Persons empowered to give orders, where any shall be assembled in case of a shipwreck, &c.

XIII. And, to prevent confusion among persons assembled to save any ship, vessel, goods or effects, as aforesaid, either for want of proper orders, or by contradictory orders: Be it further enacted, That all persons so assembled shall conform in the first place to the orders of the master or other officers or owners, or other persons employed by them; and for want of their presence or directions, then in the next place to the orders of the persons authorized by this Act, or the aforesaid Act of Queen *Anne*, in the like manner, in the following subordination, as any of the said persons shall happen to be present; that is to say, in the first place, to the orders of any officer or officers of the customs; then of any officer or officers of the excise; then of the sheriff or his deputy; then of any justice or justices of the peace; then of the mayor or chief magistrate of any corporation; then of the coroner; then of any commissioners of the land tax; then of any chief constable; then of any petty constable or other peace officers; and any person whatsoever acting knowingly and wilfully

Persons acting contrary to orders forfeit 5 *l.*

fully contrary to such orders, shall forfeit any sum not exceeding five pounds, to be levied by warrant of one justice of the peace; and in case of non-payment, the offender shall be committed to the house of correction for any time not exceeding three months.

Rights of the crown, &c. reserved.

XIV. Provided always, and it is hereby enacted, That neither this Act, nor any thing herein contained, shall any way extend to deprive or prejudice his royal Majesty, his heirs or successors, or any claiming under them, or any patentee or grantee of the crown, or any lord or lords of any manor or manors, or other person whomsoever, of or in relation to any right which they or any of them have or may have or lawfully claim to any wreck or wrecks, or any goods which are or shall be *flotsam*, *jetsam* or *lagan*, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this Act had never been made.

Examination on oath to be taken of the ship's name, cargo and owners, &c.

XV. And be it further enacted by the authority aforesaid, That the officer of the customs who shall act in the preserving of any ship or vessel in distress, or the cargo thereof, shall, as soon as conveniently may be, cause or procure all persons belonging to the said ship or vessel, and others who can give any account thereof, or of the cargo thereof, to be examined upon oath before some justice of the peace, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer and owners thereof, and of the owners of the said cargo, and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress; which examination the said justices are hereby required to take down in writing, and they shall deliver a true copy thereof, together with a copy of the said account of the goods, to the said officer of the customs, who shall forthwith transmit the same to the secretary of the Admiralty for the time being, who shall publish or cause to be published in the next *London Gazette*, so much thereof as shall or may be necessary for the information of the persons interested or concerned therein.

and a copy to be transmitted to the Secretary of the Admiralty, and published in the Gazette.

The Acts 12 Ann. st. 2. c. 18. and 4 Geo. 1. c. 12. to be in force where not altered by this Act.

XVI. And be it further enacted by the authority aforesaid, That the before-mentioned Act of Parliament, made in the twelfth year of her said late Majesty Queen *Anne*; and also, an Act made in the fourth year of the reign of his late Majesty King *George* the First, for enforcing and making perpetual the before-mentioned Act, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships, shall in all things remain in full force, save only so far as the same are altered or changed by this present Act.

Commencement of this Act.

XVII. And be it further enacted by the authority aforesaid, That this Act shall take place from the twenty-ninth day of *September*, in the year of our Lord one thousand seven hundred and fifty-three.

XVIII. Provided,

XVIII. Provided, That nothing in this Act contained shall extend, or be construed to extend, to that part of Great Britain called *Scotland*. Not to extend to Scotland.

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6 *Geo.* IV. *c.* 107.

XLVII. IT shall be lawful for the owner or salvor of any property liable to the payment of duty saved from sea, and in respect of which any sum shall have been awarded under any law at the time in force, or in respect of which any sum shall have been paid, or agreed to be paid by the owner thereof, or his agent, to the salvors to defray the salvage of the same, to sell so much of the property so saved as will be sufficient to defray the salvage so awarded, or such other sum so paid or agreed to be paid; and that upon the production of an award made in execution of any such law to the commissioners of His Majesty's Customs, or upon proof to the satisfaction of the said commissioners that such sum of money has been paid, or has been agreed to be paid, the said commissioners are hereby empowered and required to allow the sale of such property aforesaid, free from the payment of all duties, to the amount of such sum so awarded, paid, or agreed to be paid, or to the amount of such other sum as to the said commissioners shall seem just and reasonable: Provided always, that if such owner or salvor shall be dissatisfied with any determination of the said commissioners as to the amount of such property to be sold duty free, it shall be lawful for such owner or salvor to refer any such determination of the said commissioners to the judgment and revision of the High Court of Admiralty, and in that case such sale shall be suspended until the decision of such court shall have been had thereon.

XLVIII. All foreign goods, derelict, jestam, flotsam and wreck, brought or coming into the United Kingdom, or into the *Isle of Man*, shall at all times be subject to the same duties, as goods of the like kind imported into the United Kingdom respectively are subject to; and if any person shall have possession of any such goods, either on land, or within any port in the United Kingdom, and shall not give notice thereof to the proper officer of the customs within twenty-four hours after such possession, or shall not on demand pay the duties due thereon, or deliver the same into the custody of the proper officer of the customs, such person shall forfeit the sum of one hundred pounds; and if any person shall remove or alter, in quantity or quality, any such liquors or tobacco, or shall open or alter any package containing any such liquors or tobacco, or shall cause any such Act to be done, or assist therein, before such liquors or tobacco shall be deposited in a warehouse, in the custody of the officers of the customs, every such person shall forfeit the sum

of one hundred pounds; and in default of the payment of the duties on such liquors or tobacco, within eighteen months from the time when the same were so deposited, the same may be sold in like manner, and for the like purposes, as goods imported may in such default be sold: Provided always, that any lord of the manor having by law just claims to such liquors or tobacco, or if there be no such lord of the manor, then the person having possession of the same shall be at liberty to retain the same in his own custody, giving bond, with two sufficient sureties, to be approved by the proper officer of the customs, in treble the value of such goods, for the payment of the duties thereon at the end of one year and one day, or to deliver such goods to the proper officer of the Customs, in the same state and condition as the same were in at the time of taking possession thereof.

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1 & 2 *Geo.* IV. *c.* 75.

AN ACT to continue and amend certain Acts for preventing Frauds and Depredations committed on Merchants, Shipowners, and Underwriters, by Boatmen and others; and also for remedying certain defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*.

49 G. 3. c. 122.

WHEREAS by an Act passed in the forty-ninth year of his late Majesty King *George* the Third, intituled, *An Act for preventing Frauds and Depredations on Merchants, Shipowners, and Underwriters, by Boatmen and others*; *and also, for remedying certain defects relative to the Adjustment of Salvage in England, under an Act made in the Twelfth Year of Queen Anne*; which Act was to continue in force for seven years, and from thence to the end of the next session of Parliament: And whereas by an Act, passed in the fifty-third year of his late Majesty King *George* the Third, the said above-recited Act (except so far as the same was altered and extended), was further continued in force for seven years from the passing of the said Act, and from thence to the end of the next session of Parliament, and no longer: And whereas it is fit and expedient that the said above recited Acts should be further continued, except so far as the same are altered by this Act: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all pilots, boatmen, hovellers, or other persons, who shall take up any anchors, cables, tackle, apparel, furniture, stores or materials, or any goods or merchandize which may have been parted with, cut from, or left by any ship or vessel within any harbours, rivers or bays, or on

Pilots and others to deposit anchors, cables, and other ships materials,

on any of the coasts of this kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any such boatman, pilot, hoveller or other person, shall send a report in writing of the articles so found, and stating the marks, if any, thereon, and also an accurate and particular description of the bearings, distances, and situations, and time when and where the same were so found, to a deputy vice admiral or his agent, at or near to the port or place where such boatman, pilot, hoveller or other person, shall first arrive with such articles, within forty-eight hours after his or their arrival at such port or place, or before he or they shall leave the port, if he or they shall quit it before that time shall expire; and shall also, within such period as aforesaid, deliver such articles so found, into a proper warehouse, or such other place as the vice admiral of each county shall appoint for safe custody, until the same shall be claimed by the owner or owners thereof, or his, her, or their agent or agents, and the salvage, together with such other charges and expences as are hereinafter directed to be paid in respect of such articles, paid by him or them, or security given for the payment thereof, to the satisfaction of the salvor or salvors thereof: and every such pilot, boatman, hoveller or other person, who shall wilfully and fraudulently keep possession of, or retain, or conceal, or secrete any anchors or cables, tackle, apparel, furniture, stores or materials, or any goods or merchandize, or deface, take out, or obliterate the marks and numbers thereon, or alter the same in any manner, with intent thereby, directly or indirectly, to prevent the discovery and identification of such articles so found, weighed, swept for, or taken possession of as aforesaid, and shall not report and deliver the same at some proper warehouse or other place in the manner aforesaid, and within the time hereinbefore limited, shall forfeit all claim to salvage, and shall, on conviction, be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

taken possession of by them, in the places to be appointed by this Act.

Concealing such articles forfeits claim to salvage, and subjects the offender to punishment.

II. And be it further enacted, That every deputy vice admiral or his agent, to whom any such report shall be sent, shall within two days forward the same, or a true copy thereof, to the secretary of the corporation of the Trinity House of *Deptford Strond*, in *London*, and the same shall be placed by the said secretary in some conspicuous situation, for the inspection of all persons choosing to inspect and examine the same: Provided always, that no report shall be forwarded by such deputy vice admiral or his agent to the said corporation of the Trinity House of *Deptford Strond*, until the articles so to be deposited as aforesaid, for and in respect of which a report is required to be made, as hereinbefore is directed, shall amount in value to the sum of twenty pounds.

Deputy Vice admiral to send report of goods deposited to the Trinity House.

No report made until the articles amount to 20*l.*

Deputy Vice admiral may seize goods not reported, and deposited, and shall make report thereof to the Trinity House, on penalty of 20*l.* and double value of the seizure.

III. And be it further enacted, That it shall be lawful for any deputy vice admiral or his agent to seize and detain any such articles as shall not have been reported in the manner hereinbefore directed; and upon such seizure such deputy vice admiral or his agent, shall deposit the same in the warehouse or other place to be appointed as aforesaid, and shall within two days thereafter send a report in writing of the articles as seized, and stating the marks (if any) thereon to the said Corporation of the Trinity House of *Deptford Strond*, as before directed, to be made public as aforesaid; and every such deputy vice admiral or his agent, so seizing, who shall not make such report as aforesaid within two days after seizure as aforesaid, shall, on conviction before any justice of the peace or magistrate, upon the oath of one credible witness, or on the confession of the party offending, forfeit and pay the sum of twenty pounds for every such neglect, together with double the value of the goods so seized, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and every deputy vice admiral or his agent, who shall make any such seizure, without any previous information being given to such deputy vice admiral or his agent, shall, on the same articles being claimed by and delivered to the owner thereof, or his or her agent, be entitled to receive such sum of money as shall be equal to one third part of the value thereof, after the payment of the duties, and any charges incidental to the recovery and preservation of the same.

One-third of value of goods allowed on being claimed by the owner.

Mode of ascertaining the value of articles seized.

IV. Provided always, and be it further enacted, That if the owner and deputy vice admiral or agent so seizing cannot agree on the value of the articles, such value shall be ascertained in like manner as is hereinafter directed with regard to salvage, or be referred to the decision of the High Court of Admiralty.

If Deputy Vice admiral seize by previous information, he and informer to divide two-sixth parts.

V. Provided also and be it further enacted, That if any such seizure shall have been made in consequence of any information given to any such deputy vice admiral or his agent, the deputy vice admiral or his agent so seizing shall only be entitled to receive from the owners or their agents of the articles one sixth part of the value thereof, and one other one sixth of such value shall be paid to the person who shall have given the information, the value of such articles to be ascertained in manner aforesaid.

If articles not claimed within a limited time, to be sold according to 12 Anne, c. 18. and if they shall have been seized, the Deputy

VI. And be it further enacted, That if any such articles, so reported and delivered into the warehouse or other place as aforesaid, shall not be claimed within a year and a day after such report shall have been transmitted to the said Corporation of the Trinity House of *Deptford Strond*, as before mentioned, the same shall be sold, and a certificate of such sale shall be delivered to the purchaser thereof, under the direction of the High Court of Admiralty, and the monies arising from the sale thereof be applied in the mannner directed in and by an Act passed in the twelfth

twelfth year of the reign of her late Majesty Queen *Anne*, intituled, *An Act for preserving all such Ships and Goods thereof which shall happen to be found on shore, or stranded on the coasts of this Kingdom, or any other of Her Majesty's dominions*; and if the same shall have been seized by the deputy vice admiral or his agent as aforesaid, then the deputy vice admiral or agent so seizing, and the person who shall have given such information as shall have led to the seizure (if any such information shall have been given), shall be equally entitled to the salvage which shall be allowed by the High Court of Admiralty to the salvors in the case of unclaimed property.

Vice admiral seizing and the person informing shall be equally entitled to salvage.

VII. And be it further enacted, That if the salvors of any such articles, or any goods so found, weighed, swept for, or taken possession of as aforesaid, and so lodged and reported as aforesaid, and the owner or owners thereof, or his, her or their agent or agents, cannot agree respecting the amount of salvage to be paid for or in respect of the same, or the value thereof, as the case may be, then the matter in difference shall be determined by any three justices of the peace residing near to the place where such articles or goods shall be deposited, shall begin to proceed in their inquiry, as to such matters in dispute, within forty-eight hours after such difference shall be referred to them for their determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of the salvage to be paid, or the value thereof, as the case may be, within forty-eight hours after he shall have been so nominated as aforesaid; and the said justices, and such third person so nominated as aforesaid, shall have full power and authority, whenever they see occasion, to examine the parties, or their witnesses, upon oath, which oath they are hereby authorized to administer.

If the owners and salvors cannot agree respecting the salvage, three Justices shall determine the difference.

If the Justices cannot agree, they shall nominate a person, conversant in maritime affairs, who shall determine.

VIII. And be it further enacted, That it shall also be lawful for the said justices to decide, in the like manner, and within the same time as is hereinbefore directed with regard to salvage, on all claims and demands whatsoever, which shall or may be made by pilots, boatmen and other persons, for service of any description (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables or other stores from any port or ports of the coast of *England* and *Wales*, and *Berwick-upon-Tweed*, or for the saving and preserving any goods or merchandize which may have been wrecked, stranded or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel, the master, owner or owners of such ship or vessel, or his, her or their agent or agents, being present with such justices; and that the said justices shall have full power and authority to hear and determine

Justices may in like manner determine upon remuneration to be made for services rendered to ships in distress or otherwise.

on all cases whatever, of services rendered by pilots, boatmen and others, to ships or vessels (except pilotage), whether such ships or vessels shall at the time be in distress or not, and that they shall have the like power of examining the parties or their witnesses upon oath, as last hereinbefore directed; and the decision of such justices shall be final and conclusive on all parties, save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within thirty days after the award of the justices or such person so appointed as aforesaid.

Decision of Justices final, unless an appeal to Court of Admiralty.

IX. And be it further enacted, That in case the party or parties so claiming to be entitled to salvage, or the party or parties who is or are to pay the same, or their agents, shall be dissatisfied with such award and decision of the justices, or of the person so to be nominated by them as aforesaid, it shall be lawful for either of them respectively, within ten days after such award is made, but not afterwards, to declare to the justices, or such other person to be nominated by them as aforesaid, his, her or their desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage, and thereupon he, she or they shall proceed, by taking out a monition within thirty days from the date of the said award; but in such case the said justices are hereby required and empowered to deliver to the owners and proprietors, or their agents, any such anchor or cable, goods, or other articles, respecting which any claim for salvage shall be made upon the owners or proprietors thereof, his, her or their agent, giving full and sufficient bail in the amount of the sum awarded for salvage or compensation, and which bail shall be taken by a commissioner for taking examinations in prize cases, if there shall be one in the port or place where such difference shall arise; but if there shall be no such commissioner there, then the said justices, to whom such difference shall have been referred, or either of them, or any other of his Majesty's justices of the peace, are and is hereby authorized to take the same; and the commissioner or justice who shall take such bail, shall certify the same according to the form contained in the Schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, together with a true certificate in writing, of the gross value of the whole of the articles respecting which salvage shall be claimed, and also a copy of such proceedings and awards, on unstamped paper, certified under the hand of such commissioner or justice taking the bail, as aforesaid; and the same shall be admitted by such Court of Admiralty as evidence in the cause.

Persons dissatisfied may appeal to the High Court of Admiralty; but the goods to be restored to the owners on giving bail.

Bail to be taken by a Commissioner in prize cases, if there is one in the place, otherwise by a Justice.

X. And be it further enacted, That it shall and may be lawful for the person so to be named by the said justices, as aforesaid, who shall decide on the amount of salvage to be paid, or on the value of the articles, or on the remuneration to be made to persons rendering assistance to ships or vessels, or persons as aforesaid, to demand

Persons named by Justices to decide on the amount of salvage, &c. may

demand and receive of and from the owner or owners of the articles saved, or of the ships or vessels in behalf of which the services may have been rendered, or his, her or their agents or agent, a sum of money not exceeding two pounds two shillings, and such owner or owners, or his, her or their agent or agents, shall and is and are hereby required to pay to the person so to be nominated by the said justices nominated as aforesaid, such fee or reward, immediately after he shall have made his award or decision, and on delivery of the same.

demand from the owner 2 *l.* 2 *s.*

XI. And be it further enacted, That if any person or persons shall wilfully cut away, cast adrift, remove, alter, deface, sink or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other way injure or conceal, any buoy, buoy rope or mark belonging to any ship or vessel, or which may be attached to any anchor or cable, belonging to any ship or vessel whatever, whether in distress or otherwise, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged to be guilty of felony, and shall be liable to be transported for any term not exceeding seven years, or in mitigation of such punishment to be imprisoned for any number of years, at the discretion of the Court in which the conviction shall be made.

Persons cutting away or defacing buoy ropes, &c. to be deemed guilty of felony, &c.

XII. And be it further enacted, That if any person shall knowingly and wilfully, and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or receive any anchors, cables, or goods or merchandize which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions hereinbefore contained, with regard to such articles, shall not have been previously complied with, such person or persons shall, on conviction thereof, be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years, at the discretion of the Court before which he, she, or they shall be tried.

Persons fraudulently purchasing or receiving anchors, cables, &c. shall be considered receivers of stolen goods.

XIII. And be it further enacted, That in case the master, mate, or crew of any ship or vessel bound to parts beyond the seas, shall find and take on board of such ship or vessel, any anchor, cable, or any goods or merchandize, or shall receive any anchor, cable, or any goods or merchandize on board of such ship or vessel, from any other person or persons who may have found the same, knowing the same to have been so found, the master, mate or other person, having the command of such ship or vessel, shall make a true entry in the log-book of such ship, of the description

Masters of ships bound to parts beyond the seas, finding or taking on board anchors and other articles, to make entry in the log-

book, and report the same to the Trinity House, and on their arrival in England deposit the articles.

description of the articles so found or taken on board as aforesaid, stating the marks (if any) thereon, and the bearings and distances, and other minute description, and the time when and where the same were found and taken on board; and also shall, at the first possible opportunity, transmit a report in writing, containing a true copy of such entry in the log-book of the said ship or vessel, to the said Corporation of the Trinity House of *Deptford Strond*, and on the return of such vessel to any port in *England* or *Wales*, or *Berwick-upon-Tweed*, he shall deliver the same articles into the possession of a deputy vice admiral or his agent, in or nearest to such port at which he shall first arrive, and within twenty-four hours after his arrival, with the like report as is hereinbefore directed; and such deputy vice admiral or agent is hereby required to transmit such report to the said Corporation of the Trinity House at *Deptford Strond*, to be placed by the said Corporation for inspection in like manner as aforesaid; and if the same shall not be claimed by the owner or owners thereof, or his, her or their agent, within a year and a day after such report shall be transmitted, the same shall be sold and disposed of according to law with regard to unclaimed property; and in default thereof, or if the master of such ship or vessel shall sell or dispose of such anchor, cable, goods, or merchandize, to any person or persons whomsoever, or shall not, upon his first return to any port within *England* and *Wales*, or *Berwick-upon-Tweed*, report and deliver the same according to the provisions of this Act, he shall for every such offence forfeit all claim to salvage, and on being thereof lawfully convicted before any justice of the peace or magistrate, on the oath of one credible witness, or on the confession of the party offending, forfeit and pay any sum not exceeding one hundred pounds, nor less than thirty pounds, one half of which penalty shall be paid to the informer, and the other half to the president and governors, for the relief and support of such maimed and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchants service, under an Act of Parliament made in the twentieth year of the reign of his late Majesty King *George* the Second, intituled, *An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned in the Merchants Service*; and shall also forfeit and pay double the value of such articles to the owners or owner thereof.

If not claimed, to be sold.

Penalty for making default, not exceeding 100 *l.* nor less than 30 *l.*

Application of penalty.

20 G. 2. c. 28.

Fees to be paid for reports. 1*l.* 1*s.* to the Deputy Vice admiral, and 1*l.* 1*s.* to the Secretary of the Trinity House.

XIV. And be it further enacted, That it shall and may be lawful for the deputy vice admiral or his agent, who shall make the report required by this Act to the said Corporation of the Trinity House of *Deptford Strond* as aforesaid, to receive of and from the owner or owners of the articles in respect of which the report shall be made, or if the same are not claimed, then out of the produce of the sale thereof, the sum of one pound one shilling for each

each report; and that it shall also be lawful for the secretary or other proper officer of the said Corporation of the Trinity House of *Deptford Strond*, to receive in like manner as last-mentioned, the sum of one pound one shilling for each report so to be received by the said Corporation, to be made public by them as aforesaid, which last-mentioned sum shall be paid to the said deputy vice admiral or his agent, before the delivery of the goods, and accounted for by him to the Trinity House.

Punishing pilots and others selling or disposing of anchors or cables in foreign countries.

XV. And whereas pilots, hovellers, boatmen, and other persons in small vessels have for many years conveyed anchors and cables which may have been weighed, swept for, or taken possession of by them as aforesaid, or which they may have purchased of other persons, knowing them to have been weighed, swept for, or taken possession of, without being reported as aforesaid, to foreign countries, and there sold and disposed of, to the manifest injury and loss of the owners thereof; for remedying whereof be it further enacted, That every pilot, hoveller, boatman, or the master of any such vessel, who shall convey any such anchor or cable to any foreign port, harbour, creek, or bay, and there sell and dispose of the same, shall be deemed and adjudged guilty of felony, and shall be transported for any term not exceeding seven years.

Penalty on dealers in marine stores not having their names painted on their storehouses, or cutting up any cable without a permit from a magistrate.

XVI. And be it further enacted, That all persons who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names, with the words "Dealer in Marine Stores," painted distinctly in letters of not less than six inches in length, upon the front of all their storehouses, warehouses, and other deposits for such goods; and in default of their so doing, they shall, on conviction before any justice or justices of the peace, or magistrate or magistrates of any jurisdiction, where such storehouse, warehouse, and depôt shall be, upon the oath of one credible witness, or on confession of the party offending, forfeit and pay a sum not exceeding twenty pounds, nor less than ten pounds, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and that it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable, exceeding five fathoms in length, or uncant, untwine, or unlay the same into junk or paper stuff on any pretence whatsoever, without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted, unless an affidavit shall have been made that the cable so intended to be cut up had been *bonâ fide* purchased, and without fraud, by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part, that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description

tion of such cable, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted, on pain of forfeiting for the first offence any sum not exceeding twenty pounds, nor less than ten pounds; and for every second or further offence, any sum not exceeding fifty pounds, nor less than twenty pounds, to be recovered before any justice of the peace: and one half thereof to go to the informer, and the other half to the poor of the parish in which such offence shall have been committed.

Dealers to keep an account of old stores bought by them;

XVII. And be it further enacted, That for the more effectual prevention of such frauds, all dealers in such marine stores as aforesaid, shall keep a book or books, fairly written, in which entries shall be from time to time regularly made, of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof; and before any person who shall obtain such permit for the cutting up of any such cable (as hereinbefore required to be obtained), shall proceed to cut up the same by virtue thereof, there shall be published, by the space of one week at least before the cutting up the same, one or more advertisement or advertisements in some public newspaper printed nearest to the storehouse, warehouse, or depôt where the articles shall be deposited, notifying that such party had obtained such permit, for the purpose of cutting up such cable, and of such kind and quality as therein described, and also specifying the place where such articles shall be deposited; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons, and shall have verified upon oath the fact of such his or their suspicion before any justice of the peace or magistrate residing near to the said storehouse, warehouse, or depôt, by warrant for that purpose thereupon granted, to require of and from such dealer, who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer, when so thereunto required as aforesaid, shall neglect or refuse to produce to the person named in such warrant, as the person on whose oath the same shall have been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries, containing accounts of the several particulars hereinbefore required to be entered, shall be made, or to permit such inspection or examination as aforesaid, or shall, after obtaining such permit for the cutting up of any such cable, and before the cutting up of the same, neglect to publish such one or more

to advertise before cutting up of cordage.

Persons may demand inspection of books.

Penalty on refusing inspection, &c.

more advertisement or advertisements relative thereto, as is hereinbefore directed and required, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned shall forfeit and pay for every such offence, being his, her or their first offence, any sum not exceeding twenty pounds nor less than ten pounds, and for every second or further offence, any sum not exceeding fifty pounds nor less than twenty pounds, one half of which penalty shall, on conviction before any justice of the peace or magistrate residing near as aforesaid, be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this Act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate, upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found then every such offender or offenders shall and may be committed by any justice of the peace or magistrate as aforesaid to gaol, in case of any first offence, for the space of six calendar months, and in case of any second or further offence, for the space of twelve calendar months, unless the said penalty and the charges shall be sooner paid.

Recovery of penalties.

XVIII. And be it further enacted, That all manufacturers of anchors and kedge anchors, shall place his, her or their name or names, together with a progressive number, and also the weight of the anchor, in legible characters upon the crown, and also upon the shank under the stock of each anchor, which he, she or they shall manufacture; and shall also place his, her or their name or names, together with a number, and also the weight of the kedge anchor upon the crown, and also upon the shank near to the stock of every kedge anchor, which he, she or they shall manufacture; and in case any such manufacturer shall neglect to place such name, number, or weight in the manner hereinbefore directed and required, every such person or persons so offending shall, on conviction before any justice of the peace or magistrate, on the oath of one credible witness, or on the confession of the party so offending, forfeit and pay any sum not exceeding five pounds, nor less that forty shillings, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township in which such offence shall be committed.

Manufacturers of anchors to place marks on anchors and kedge anchors.

Penalty on neglect.

XIX. And for the more easy and speedy conviction of offenders against this Act, be it further enacted, That all and every justice or justices of the peace before whom any person shall be convicted of any offence against this Act, shall and may cause the conviction to be drawn up according to the following form; *videlicet*,

Form of conviction.

'BE it Remembered, That on the day of
' in the year of our Lord

' *A.B.* is convicted before me [*or* us], 'one [*or* two, *as the case may be*] of His Majesty's justices of 'the peace for the [*here specify the 'offence, and the time and place when and where committed, as the 'case may be,*] contrary to an Act passed in the second year of 'the reign of King *George* the Fourth, intituled, [*here insert the 'title of this Act*]. Given under my hand and seal [*or*, our 'hand and seals] the day and year first above written.'

And no certiorari, or other writ or process for the removal of any such conviction, or any proceedings thereon, into any of His Majesty's Courts of Record at *Westminster*, shall be allowed or granted.

Appeal from conviction to the general quarter sessions.

XX. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before mentioned, of any offence or offences against this Act, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days notice of such appeal to the person or persons appealed against, and of the matter thereof, and entering into a recognizance before some justice of the peace for such county, city, or place, with two sufficient sureties, conditioned to try such appeal, and for abiding the determination of the court therein; and such justices at the general quarter sessions shall, upon due proof of such notice having been given and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable, and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form only, or be removed by certiorari, or any other writ or process whatsoever, into any of His Majesty's Courts of Record at *Westminster* or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding.

Inhabitants may be competent witnesses.

XXI. Provided always, and be it further enacted, That the inhabitants of any parish, township or place, shall be deemed and taken to be competent witnesses, for the purpose of proving the commission of any offence against this Act, within the limits of such parish, township or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township or place, or otherwise, for the benefit or use, or in aid or in exoneration of such parish, township or place.

Offences may be tried in the county where articles

XXII. And be it further enacted, That all felonies, misdemeanors, and other offences under this Act, shall and may be laid to be committed, and shall be tried in any city or county (being a county) where any such article, matter or thing, in relation

tion to which such offence shall have been committed, shall have been found in the possession of the person committing the offence; or if the same shall have been sold in foreign parts, then in the county or place in which the person selling the same shall reside. found, or if sold in foreign parts, where offenders reside.

XXIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to or be in force within the limits specified and directed in an Act passed in the forty-eighth year of the reign of his late Majesty, intituled, *An Act for preventing the various Frauds and Depredations committed on Merchants, Ship Owners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the Adjustment of Salvage under a Statute made in the twelfth year of the Reign of her late Majesty Queen* Anne, or in any manner to affect any of the provisions of the said Act, but the said recited Act shall remain in full force within the limits therein specified, as if this Act had not been passed: Provided also, that nothing in this Act contained shall extend or be construed to extend to repeal, take away, or alter any of the clauses, powers, or provisions contained in an Act of Parliament made in the forty-eighth year of the reign of his late Majesty, intituled, *An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the* British *Seas*; but that the said Act shall remain in full force as if this Act had not been passed. Act not to alter the statute of 48 G. 3. c. 130. Reservation of the statute of 48 G. 3. c. 104.

XXIV. Provided also, and it is hereby further declared, That this Act, or any thing herein contained, shall not extend or be construed to extend to the taking away, abridging, prejudicing or impeaching, in any manner whatever, the jurisdiction of the High Court of Admiralty of *England*, or the jurisdiction of the Admiralty Court of the Cinque Ports, two ancient towns, and their members, or of the Admiralty Court of the borough of *Great Yarmouth*, in the county of *Norfolk*, or of the Admiralty Court of the borough of *Dunwich*, in the county of *Suffolk*, or of the Admiralty Court of the borough of *Southampton*, in the county of *Hants*, or of the Admiralty Court of the borough of *Southwold*, in the county of *Suffolk*, or of the Admiralty Court of the borough of *Lynn Regis*, in the county of *Norfolk*; but that it shall and may be lawful for the said courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights and offences, as they have heretofore had, used, exercised and enjoyed, as fully and effectually, to all intents and purposes whatever, as if this Act had not been made; any thing herein contained to the contrary thereof in anywise notwithstanding. Reservation of the rights of the High Court of Admiralty, &c.

XXV. Provided also, and it is hereby enacted, That neither this Act nor any thing herein contained shall any ways extend, or be construed to extend, to deprive or in any ways prejudice the Reservation of the rights of the Crown, and

of Lords and Ladies of Manors.

the rights of His Majesty, His Heirs or Successors, or any claiming under them, or any of them, or any patentee or grantee of the crown, or any lord or lords, or lady or ladies, of any manor or manors whatsoever; but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this Act had never been made.

Lords of Manors not to lay claim to wrecks till report of the same be made to the Deputy Vice admiral of the Coast, &c.

XXVI. And be it further enacted, That no lord or lady of any manor, or other person who may be entitled to or claim to be entitled to wreck of the sea, or to any goods found jetsam, flotsam or lagan, shall be entitled to appropriate such wreck or goods to his, her or their own use, or otherwise to dispose thereof, until he, she or they shall have caused a report thereof in writing, to be given to the deputy vice admiral of that part of the coast where the same shall have been stranded, wrecked or found, or to his agent; or if there shall be no such deputy vice admiral or agent residing within the distance of fifty miles, then to the Corporation of the Trinity House of *Deptford Strond*; which report shall contain an accurate and particular description of the wreck or goods found, and of the place or places and time or times where and when the same may have been found, and of any marks that may be thereon, and of such other particulars as may the better enable the owner or owners thereof to recover the same, and also of the place or places where the same are deposited and may be found and examined by any person claiming any right to such wreck or goods, nor until the full expiration of a year and a day after the delivery of such notice, any thing in any law to the contrary notwithstanding; and the deputy vice admiral or agent aforesaid shall, within forty-eight hours after receiving such report as aforesaid, transmit a copy thereof to the secretary of the Corporation of the Trinity House of *Deptford Strond*, upon pain of forfeiting for any neglect to transmit such account as aforesaid, the sum of fifty pounds to any person who will sue for the same; and the said secretary shall cause such account to be placed in some conspicuous situation, for the inspection of all persons claiming to inspect and examine the same: Provided always, that nothing herein contained shall extend or be construed to extend to repeal or in any manner to affect any of the provisions of an Act passed in the fifty-second year of his late Majesty, intituled, *An Act for charging Foreign Liquors and Tobacco, derelict, jetsam, flotsam, lagan or wreck, brought or coming into* Great Britain, *with the Duties payable on Importation of such Liquors and Tobacco.*

Deputy Vice admiral to transmit a copy of report to the Secretary of the Trinity House. Penalty 50*l.*

52 G. 3. c. 159.

Perishable goods may be sold with consent of a Justice.

XXVII. And be it further enacted, That when any goods which shall be found or taken possession of by any lord or lady of any manor, or person entitled or claiming to be entitled to wreck of the sea, or to goods found flotsam, jetsam, or lagan, or his or her agent or servant, or by any vice admiral, or his deputy or agent, or by any officer or other person whatsoever acting by

or

or under the authority of this Act, or of an Act passed in the present session of Parliament, intituled, *An Act to continue and amend certain Acts for preventing various Frauds and Depredations committed on Merchants, Shipowners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports*, shall be of so perishable a nature, or so much injured or damaged, that the same cannot be kept, then and in every such case such goods shall and may, at the request of any of the persons interested or concerned therein, or in the saving and preserving thereof, by and with the consent and approbation of some justice of the peace, not interested or concerned in the same, or in the saving and preserving thereof, and in the presence of such justice, or of some person for that purpose specially appointed by such justice, be sold by public auction or private contract, as such justice may direct by some writing under his hand, which writing shall contain an accurate and particular account of the goods, and of the marks that may be thereon, or other particulars belonging thereto, and of the times and places of the finding and intended sale thereof; and the money raised by such sale, after defraying the reasonable expenses of the sale, to be settled and allowed by such justice, shall be deposited and remain in the hands of the lord or lady of the manor, or other person, or deputy vice admiral, who would have received the custody of the goods so sold, to abide and be subject and liable to the claims of all persons, in like manner as the goods themselves would be subject and liable if remaining unsold: Provided always, that all persons required to transmit reports to the deputy vice admiral of the finding of any goods, shall, in case of any such sale as last aforesaid, likewise transmit to such deputy vice admiral an account of such sale, and of the proceeds thereof; and the said deputy vice admiral shall forward such reports to the secretary of the Trinity House of *Deptford Strond*, within the like periods, and under and subject to the like penalties and forfeitures for any neglect therein, as in cases of any goods found and required to be reported under the provisions of the said recited Act and this Act.

c. 76.

Money to be deposited in the hands of the Lord of the Manor, &c.

An account of sale to be transmitted to the Deputy Vice admiral.

XXVIII. And be it further enacted, That it shall and may be lawful to and for the commissioners of Customs and Excise, and they are hereby required to permit all goods, wares and merchandize saved from any vessel or vessels stranded or wrecked on their respective homeward voyage, to be forwarded to the port or ports of their original destination; and also to permit goods, wares and merchandize saved from any vessel or vessels stranded or wrecked on their respective outward voyage, to be returned to the port or ports at which the same were shipped; but such commissioners are to take security for the due protection of the revenue in respect of such goods, wares and merchandize.

Goods saved from vessels wrecked to be forwarded to the ports of their original destination.

Carriages may pass over the lands near the coast where vessels are wrecked, for the preservation of the wreck, &c.

XXIX. And be it further enacted, That it shall be lawful for the deputy vice admiral of the part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and for his agent, and also for the owner or master of any such ship or vessel, and for the owners of any such goods, or of any part thereof, and for any officer of the Customs or Excise, and other officer, and for all persons whatsoever employed or acting in aid of or in the assisting of any such deputy vice admiral, officer, master, or owner as aforesaid, in the saving or recovering any such ship or vessel, or the cargo, stores, tackle, or other articles belonging to the same, or the preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, to pass and repass with their horses, carts, carriages or servants, over any lands near to the part of the sea coast where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of rendering assistance in saving, recovering and preserving any such ship or vessel, or goods or stores, or any cables, anchors, spars, masts, cordage, or other tackle or articles belonging to any ship or vessel, or for saving or otherwise assisting in preserving the lives of the crew, or of any persons on board of such ship or vessel, or for the taking possession of and securing for the benefit of the owners thereof, of any wreck or goods, or other things cast on shore, or found on shore, or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands; and also to place any planks, timber, or any part of the wreck, or any goods or stores removed or saved from any such ship or vessel, or any other wreck or goods as aforesaid, upon any such land for a reasonable time, until they can be removed to some warehouse or safe place of deposit, making compensation to the occupier of such lands for any damage done by the means aforesaid, which compensation shall be a charge upon the wreck or goods in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled by two justices of the peace, or of a third person to be named by them, in such manner and within such times as the amount of salvage is directed to be ascertained and settled by the said recited Act in the forty-ninth year of his said Majesty's reign.

Compensation to the land occupiers.

If parties do not agree, two Justices to settle it.

Penalty on refusing persons so employed from passing over lands, &c. 100l.

XXX. And be it further enacted, That if any owner or occupier of any land or premises, over which any person is authorized by this Act to pass and repass, for any of the purposes in this Act before mentioned, shall interrupt, impede or hinder any such person from passing over his land or premises, with horses, carts, carriages and servants, for the purposes in this Act before mentioned,

tioned, or any or either of them, by locking his gates, or refusing upon request to open the same, or otherwise, or shall obstruct or hinder the placing any wreck, goods, stores, or other articles upon his land, or shall prevent their remaining there for a reasonable time, until the same can be removed to some warehouse or safe place of public deposit, such occupier shall forfeit and pay to any person who will sue for the same, the sum of one hundred pounds, to be recovered by action of debt.

Questions of salvage within the jurisdiction of the High Court of Admiralty or the Courts of Record at Westminster.

XXXI. And whereas questions have arisen as to the jurisdictions of the Courts of Record at *Westminster*, and of the High Court of Admiralty, in cases of salvage of ships and goods performed between high and low water mark; be it therefore enacted, That any question in relation to salvage of any ship or vessel, or of any goods, which shall be performed between high and low water mark, shall be and be deemed to be within the jurisdiction or cognizance of the High Court of Admiralty, or of His Majesty's Courts of Record at *Westminster*; any thing in any Act or Acts of Parliament to the contrary notwithstanding.

In case of damage done by a *foreign* vessel in harbour, &c. any of the Judges may cause the vessel to be arrested until the owners, &c. shall undertake to appear defendant in any action.

XXXII. And be it further enacted, That in every case in which any damage shall be done by any *foreign* ship or vessel to any *British* ship or vessel, barge, boat, or other craft, or any buoy or beacon, in any harbour, port, river, or creek, and it shall appear on a summary application, made to any judge of any of His Majesty's Courts of Record at *Westminster*, or to the judge of the High Court of Admiralty respectively, that such damage or loss has probably been sustained or arisen by the misconduct or negligence of the master or mariners of such *foreign* ship or vessel, then and in such case it shall be lawful for such judge to cause such *foreign* ship or vessel, being in any harbour, port, river, or creek, to be arrested and detained, until the master, or owner, or consignee, or some agent of the owner, master, or consignee of such ship or vessel, shall undertake to appear and be defendant in any action which may be brought for such loss or damage, and give such sufficient security, by bail or otherwise, for all costs and damages, if recovered, as shall be directed and ordered by such judge, if it shall upon the trial of such action or suit appear that such loss or damage shall have arisen from such negligence or misconduct as aforesaid; and in such action or suit the person giving security shall be made defendant, and shall be stated to be the owner of the *foreign* ship or vessel doing such damage; and it shall not be necessary in any such action or suit to give any other evidence of the liability of such person to such action or suit, than the production of the order of the judge, made in relation to such security as aforesaid,

Penalties, how recoverable.

XXXIII. And be it further enacted, That all penalties and forfeitures above the sum of twenty pounds, or which by this Act, or by an Act passed in the present session of Parliament, intituled

c. 76.

An Act to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Ship Owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports, or any or either of them, or by this Act, are made to be recoverable by action or suit, shall and may be sued for and recovered in any of His Majesty's Courts of Record at *Westminster*.

Reservation of the rights of the Trinity Houses of Kingston-upon Hull, Newcastle-upon-Tyne, and Scarborough.

XXXIV. Provided also, and it is hereby further enacted and declared, That this Act, or any thing herein contained, shall not extend or be construed to extend to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the Corporation of the Trinity House of *Kingston-upon-Hull*, or in the Commissioners acting under the provisions of any Act or Acts of Parliament relating to the adjustment of salvage for anchors, cables, and other ships materials found in the river *Humber*, or in the masters, wardens, and brethren of the Trinity Houses of *Newcastle-upon-Tyne* and *Scarborough* respectively; but that the said corporation, and the said masters, wardens, and brethren, shall hold and enjoy the same as fully and effectually, to all intents and purposes, as they might have done in case this Act had never been made; any thing herein contained to the contrary thereof in anywise notwithstanding.

Reservation of the rights of the city of London.

XXXV. Provided also, and it is hereby further enacted and declared, That nothing in this Act shall extend, or be construed to extend, to prejudice or take away any right, property, authority, or jurisdiction of the mayor of the city of *London*, or of the mayor and commonalty and citizens of the city of *London*, to, in, and upon the rivers of *Thames* and *Medway*.

This Act not to extend to Scotland or Ireland.

XXXVI. Provided also, and be it hereby further enacted, That nothing in this Act contained shall extend, or be construed to extend, to those parts of the United Kingdom of Great Britain and Ireland called *Scotland* and *Ireland*.

For the better adjustment and payment of salvage pursuant to 12 Ann. c. 18.

XXXVII. And whereas it is expedient that the like means of conclusively adjusting and recovering the quantum of the monies or gratuities to be paid to the said several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods or persons on board thereof, should subsist, and be by law applicable in cases where the salvors shall have acted under and by the employment and authority of any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, as are now by law provided for adjusting the quantum of such monies or gratuities, which shall have become due in cases where application shall have been first made to the officers of the customs, or other the officer or officers in that behalf named and appointed in and by a certain Act made in the twelfth year of the reign of Queen *Anne*,

Anne, intituled, *An Act for preserving all such Ships and Goods thereof which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and where such assistance shall thereupon have been rendered, in pursuance of the provision of that statute; be it therefore enacted, That all and every the means which in virtue of the said last-mentioned Act subsist, and may now be by law applied for the conclusively adjusting, and for the recovering of the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods, in cases where application shall have been first made pursuant to the said Act, to officers of the customs, or other the officer or officers in that behalf mentioned, and assistance shall have been thereupon rendered and had, in pursuance of the provisions of the said Act, shall be by law applicable and available, in like manner, to all intents and purposes, in cases where the salvors shall have acted under and by the employment and authority of any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, although no such application shall have been made to, nor any authority or assistance derived from, any officer of the customs, or other the officer or officers in the said statute in that behalf mentioned; and thereupon, upon payment or tender and refusal of the quantum of the monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, on security being given for the true payment thereof, to the satisfaction of the justices who shall have adjusted such quantum or gratuities, it shall not be lawful for any officer of the customs, or other person or persons having the possession or custody of such ship, vessel, materials, stores or goods, any longer to retain the possession or custody of the same, or any part thereof, by reason or pretence of any claim or right to a compensation or gratuity of such salvage as aforesaid, or for having acted or been employed therein.

Property saved may be sold to defray the expense of salvage.

XXXVIII. And be it further enacted and declared, That in all cases it shall be lawful for the owner or owners, or if the owner or owners refuse, for the salvors, to sell so much of the property saved as will be sufficient to defray the salvage adjudged, and all expences attending the same, and such other reasonable charges and expences respecting the said property, as shall be allowed by the High Court of Admiralty, or by the justices acting in execution of the provisions of this Act; and that a production of an order or decree from the High Court of Admiralty, or of an award made by the justices acting in execution of the provisions of this Act, the commissioners of the customs and excise shall be empowered and required, and they are hereby empowered and required, to allow the sale of such goods aforesaid, free from the

payment of all duties: Provided nevertheless, that in all cases in which they may think it advisable, it shall be lawful for the commissioners of the customs and excise to refer any such award, which may be produced to them from the justices acting in execution of the provisions of this Act, to the judgment and revision of the High Court of Admiralty.

Public Act. XXXIX. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

Schedule to which this Act refers.

ON the day of in the year of our Lord before me at in the county of [*ship's name,*] *A. B.* [*here insert the names of the salvors against, and name the stores and other articles (id est) anchors and cables, &c. as the case may be*] certain goods and merchandizes lately found and taken possession of, and belonging to the said ship, whereof was master, and also against the said master, and the owners [*or if the owners alone appear by themselves or agents, then leave out the master's name*] of the said goods and merchandize, in a cause of salvage [*master's name*] on which day appeared personally of and of who produced themselves as sureties for the said the master, and for the owners of the said goods and merchandize, and submitting themselves to the jurisdiction of the High Court of Admiralty of *England*, bound themselves, their heirs, executors, and administrators, for the master and owners of the said goods and merchandize, in the sum of of lawful money of *Great Britain*, unto the said to answer such salvage and expences, or the value of the goods [*as the case may be*] as shall be hereinafter decreed by the said court, according to the tenor of the Act in that case made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, wherever the same shall be found, to the value of the sum above mentioned.

This bill was duly taken, acknowledged, and received, at the time and place above written, before me the undersigned Commissioner; and I do believe and consider the persons above-mentioned sufficient security for the said sum of

1 & 2 *Geo.* IV. *c.* 76.

AN ACT to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Shipowners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the Adjustment of Salvage, under a Statute made in the twelfth year of the reign of her late Majesty Queen *Anne*.

WHEREAS by an Act passed in the forty-eighth year of his late Majesty King *George* the Third, intituled, *An Act for preventing Frauds and depredations committed on Merchants, Shipowners and Underwriters, by Boatmen and others, within the jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the adjustment of Salvage, under a statute made in the twelfth year of her late Majesty Queen* Anne; which Act was to continue in force for seven years, and from thence to the end of the next Session of Parliament: And whereas by an Act passed in the fifty-third year of his late Majesty King *George* the Third, the said above recited Act, except so far as the same was altered, was further continued in force for seven years from the passing of the said Act, and from thence to the end of the next session of Parliament, and no longer: And whereas it is expedient that the said recited Acts should be further continued, except so far as the same are altered by this Act; Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the Lord Warden of the Cinque Ports for the time being to nominate and appoint, by any instrument or instruments under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns, and their members, to adjust and determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors, by extremity of weather, or by any other accident whatever, and leave the same in any roadstead, or other place within the jurisdiction of the Cinque Ports, two ancient towns, and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons so to be appointed as aforesaid, within the space of twenty-four hours after such difference shall be referred to them for their determination thereof, any usage or custom to the contrary in anywise notwithstanding: Provided always, that such commissioners shall, immediately after their nomination, proceed to

48 G. 3. c. 150.

Lord Warden to appoint Commissioners to determine differences relative to salvage.

Commissioners to appoint a

Secretary or Register, subject to the approbation of the Lord Warden. Proceedings to be entered.

to elect some fit and proper person, who shall be a notary or master extraordinary in Chancery, as their secretary or register, except to the port of *Dover*, where the register for the time being of the Court of Admiralty of the Cinque Ports shall be the register; and which secretary, or register, shall enter in a book, to be kept for that purpose, all the proceedings of such commissioners, and also a copy of the awards which they shall from time to time make; but such election of secretaries, or registers, shall be subject to the approbation of the lord warden for the time being.

Power to Commissioners to settle all differences which may arise.

II. And be it further enacted, That it shall be lawful for the said commissioners to be appointed as aforesaid, to decide on all claims and demands whatever, which shall or may be made by pilots, hovellers, boatmen and other persons, for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel, any anchors, cables or other stores from any part or port of the coast of *Kent*, *Sussex*, *Essex*, or the Isle of *Thanet*, within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the *Downs*, and other bays and roadsteads on the coast of *Kent*, *Sussex* and *Essex*, and the Island of *Thanet*, or from the sea or any other place, to *Ramsgate*, *Dover*, or any other harbour, port or place, on the said coasts, within the jurisdiction aforesaid, or for the saving and preserving, within the jurisdiction aforesaid, any goods or merchandize wrecked, stranded, or cast away from any ship or vessel, the master or owners thereof, or their agents, being present at the place where the commissioners shall be sitting; and that the said commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others, to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not; and that it shall be lawful for the said commissioners, whenever they see occasion, to examine the parties or their witnesses upon their oath, which oaths shall and may be administered by the said secretary or register.

Commissioners to be paid by the owners, &c. for their trouble, such fees as shall be allowed by the Lord Warden.

III. And be it further enacted, That it shall be lawful for the commissioners so to be appointed, and their secretary or register as aforesaid, who shall decide on any such claims or demands as aforesaid, to demand and receive of and from the owners of such ships or vessels, or the proprietors of any such goods or merchandizes, against whom any pilot, boatman, or other person, shall make any claim or demand for services of any sort rendered to such ships or vessels, or for the sole saving and preserving any goods or merchandizes wrecked, stranded, or cast away, within the jurisdiction aforesaid; and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim and demand, as shall be adjudged to them in that behalf by the lord warden of the Cinque Ports for the

time being: Provided always, that no person to be appointed a commissioner by virtue of this Act, shall have power or authority to act in any other port or place than that in which he is resident, or from which his usual place of residence is not distant more than one mile; and that before such commissioner shall in any case proceed to act, they shall severally take the following oath before a magistrate or a commissioner of the Court of King's Bench or Common Pleas, or a master extraordinary in Chancery; *(videlicet)*

No Commissioner shall act out of the place where he is resident.

Commissioners to take the following Oath.

Form of Oath.

'I, *A. B.* do swear, That I have not, neither will I in any 'way, directly or indirectly, take or receive any fee, emolument 'or reward, from any of the parties whose interests are referred 'to my decision (save and except such fee or reward as shall be 'allowed by the lord warden to be paid to me by the ship 'owners or proprietors of the cargo, or their agents); and that 'I will not accept or receive any fee whatever from the persons 'claiming reward or salvage; but that I will decide according 'to the best of my judgment, on the evidence to be brought 'before me, without favour or affection to either party.

'So help me GOD.'

IV. And be it further enacted, That in case the party or parties so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the party or parties who are to pay the same, or their agents, shall be dissatisfied with such award and decision of the commissioners, it shall and may be lawful for either of them respectively, within eight days after such award is made, but not afterwards, to declare to the commissioners his or their desire of obtaining the judgment of some competent Court of Admiralty respecting the said salvage or compensation as aforesaid, and thereupon such party or parties shall forthwith be required by the commissioners to declare whether he or they will proceed in the Court of Admiralty of the Cinque Ports, or the High Court of Admiralty of *England*, and he or they shall so proceed within twenty days from the date of such award, by taking out a monition against the adverse party; but in such case the said commissioners are hereby empowered and required to permit the said ship and her cargo, notwithstanding such declaration and proceeding, to depart on her voyage, or to deliver to the owners and proprietors, or their agents, any goods or merchandizes respecting which any claim for salvage shall be made upon the owners or proprietors of the same, or their agents, giving good and sufficient bail in double the amount of the sum awarded, and which bail the said commissioners, or any of them, are and is hereby authorized to take and certify according to the form contained in the Schedule hereunto annexed, and to transmit the same without delay to the Court of Admiralty, in which the intention of proceeding shall be so declared,

Parties dissatisfied may appeal to the High Court of Admiralty, or the Admiralty of the Cinque Ports; but the ship to be liberated, on giving bail in double the amount of the award.

Bail to be taken and certified according to Schedule annexed.

cleared, together with a true certificate in writing of the gross value of the whole ship and cargo, or other goods and merchandizes respecting which salvage shall be claimed, and also an official copy of such proceedings and awards, certified by the said secretary or register, and the same shall be admitted by such Court of Admiralty as evidence in the cause.

The appeal to be conclusive.

V. Provided always, and be it further enacted, That on an appeal so as aforesaid being made to the Court of Admiralty of the Cinque Ports, or to the High Court of Admiralty, the same shall be taken and held to be final, and no ulterior appeal from sentence of the Court of Admiralty of the Cinque Ports, or from the High Court of Admiralty, shall lie to the king in Chancery.

Persons cutting away or defacing buoy ropes, &c. deemed guilty of felony.

VI. And be it further enacted, That if any person or persons shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other way injure or conceal any buoy, buoy rope or mark, belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, within the jurisdiction aforesaid, with intent thereby to defraud or injure any person or persons whatsoever, or body corporate, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged guilty of felony, and shall be liable to be transported for any period not exceeding fourteen years.

Anchors, &c. found within the jurisdiction, to be deposited in either of the places herein mentioned, &c. or the persons having them in possession, shall be adjudged guilty of receiving stolen goods.

VII. And be it further enacted, That all anchors, cables, buoys, ropes, or other ships' stores or materials, or any goods or merchandizes of any sort or description whatever, which may have been parted with, cut from, or left by any ship or vessel in the *Downs*, or elsewhere, within the jurisdiction aforesaid, whether the same shall be in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any pilots, boatmen, hovellers, or other person or persons, shall be by them delivered either at *Ramsgate*, *Deal* or *Dover*, *Harwich*, *Brightlersea*, or *Wivenhoe*, six public places of deposit declared by this Act for the reception of all such articles, or such other places as shall be declared by the Lord Warden, in the same state in which they are found, to the serjeant or serjeants of the Admiralty of the Cinque Ports aforesaid, their deputy or deputies, or such other person as he shall authorize to receive the same; but if any such articles so found, weighed, swept for, or taken possession of, shall not be so delivered immediately, or duly reported to such serjeant or serjeants, or their deputies, on the finding thereof, and shall afterwards be discovered in the possession, custody, or power of such pilots, boatmen, hovellers, or other person or persons, he, she or they shall, on conviction, be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

VIII. And

All wrecked merchandize and ships stores to be also deposited in like manner.

VIII. And be it further enacted, That all merchandize, materials of any sort, or marine stores of every description, whether belonging to His Majesty, or to any *British* subjects, or foreigners, which may be preserved from any ship or vessel stranded, deserted by her crew, or wrecked, either on shore, or on the *Goodwin* or any other sand or shoal, or any part of the main land, or any port or place within the jurisdiction aforesaid, shall be landed and delivered at one of the six places of deposit, belonging to the lord-warden's deputies at *Ramsgate*, or *Deal*, or *Dover*, *Harwich*, *Brightlersea*, or *Wivenhoe*, or such other place as shall be declared and appointed by the said lord warden for that purpose, which ever shall be most convenient or contiguous to the place where the loss occurs; and that if any person or persons, who shall have preserved or taken possession of any such merchandize or marine stores within the jurisdiction aforesaid, shall sell, dispose of, or otherwise make away with the same, or shall in any manner conceal, deface, take out, or obliterate the marks or numbers thereon, or alter the same in any manner, with intent thereby directly or indirectly to prevent the discovery and identity of such articles by the owner or owners thereof, such person or persons shall be deemed and adjudged guilty of felony.

If sold, or marks defaced by the salvors, they shall be adjudged guilty of felony.

Officers of the Lord Warden may seize anchors, stores, &c. concealed within their jurisdiction, &c.

IX. Provided always, and it is hereby enacted and declared, That nothing herein contained shall extend, or be construed to extend, to the preventing or restraining the serjeant's deputies, or any other officer of the lord warden, from seizing all such anchors, cables, buoys, buoy ropes, or other ships' stores or materials as aforesaid, and likewise all such merchandize and marine stores as aforesaid, which he or they shall find concealed, or attempted to be concealed, within the jurisdiction aforesaid, or which he or they shall find in the possession of any person or persons who shall be conveying, or in the act of preparing to convey the same out of the said jurisdiction, or from any place where the same shall have been landed within the said jurisdiction, to any other place within the same, other than to one of the said public places of deposit aforesaid; but it shall be lawful in all such cases, for all and singular the officers aforesaid, to seize the same as well on shore as at sea, within the said jurisdiction, and to take and carry the same to one of the said public places of deposit; any thing in this or in any other Act, law, custom, or usage to the contrary notwithstanding.

Receivers to be subject to the same punishment as though the goods had been stolen on shore.

X. And be it further enacted, That if any person or persons, within the jurisdiction aforesaid, shall knowingly and with intent to defraud and injure the true owner or owners thereof, purchase or receive any anchors, cables, ropes, or other ships' stores or materials of any description whatever, or any merchandize or lading which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been

been preserved from any wreck within the jurisdiction aforesaid, such person or persons shall on conviction thereof be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, and be also liable to be transported for seven years, in the discretion of the court before which he, she or they shall be tried.

Lord Warden's officers authorized to seize anchors, &c. taken up within the limits of the Cinque Ports, though removed out of such limits.

XI. And whereas it frequently happens, that anchors, cables, and other marine stores, or merchandize, which have been weighed, swept for, or taken possession of, within the jurisdiction aforesaid, are, for fraudulent purposes, carried away to *Rochester*, *London*, *Portsmouth*, and other places not within the jurisdiction aforesaid, and the officers of the lord warden cannot, by reason of such removal, recover the same; be it enacted and declared, That from and after the passing of this Act, it shall be lawful for the serjeant or serjeants of the Admiralty of the Cinque Ports, deputies, or any other officer of the Lord Warden, whenever the case shall happen, to seize such anchor, cable, or other marine stores or merchandize, out of the jurisdiction aforesaid, and there to take and carry away the same to some one of the aforesaid public places of deposit, or to place the same in a place of security, till proceedings shall be instituted against the same, either in the Court of Admiralty of the Cinque Ports, or in the High Court of Admiralty.

Dealers in ship's stores to have their names painted on their storehouses.

XII. And be it further enacted, That all persons who shall trade or deal in buying and selling anchors, cables, sails, old junk or paper stuff, old iron, or marine stores of any kind or description, within the jurisdiction aforesaid, shall have their names, with the words, "Dealer in Marine Stores," painted distinctly in letters of not less than six inches in length, upon the front of all their storehouses, warehouses, and other depôts for such goods; and in default of their so doing they shall, on conviction before any person or persons duly authorized to act as a magistrate or magistrates within the limits aforesaid, forfeit and pay any sum not exceeding twenty pounds, nor less than ten pounds, one half of which penalties shall be paid to the informer, and the other moiety to the poor of the parish where such offence shall be committed; and further, that it shall not be lawful for such dealers or traders to cut up any cables, or part of the same, or to uncant, untwine, or unlay the same, or cordage of any description, into junk or paper stuff, nor any woulding, wounding, or worming, or any cable matting on the same, or on rigging, on any pretence whatsoever, without first obtaining a permit from the Lord Warden's deputies, or one of them, which permit shall not be granted unless an affidavit shall have been first made before some one of the persons duly authorized to act as magistrates within the limits of the Cinque Ports, two ancient towns, and their members, and shall have been delivered to and left with the person granting such permit, in which affidavit there shall be sworn

Penalty.

No cables, &c. to be cut up without a permit from one of Lord Warden's deputies.

sworn that the cable and cordage, so intended to be cut up, had been purchased fairly and without fraud by the party so intending to cut up the same, and without a knowledge or suspicion on his or her part, that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable or cordage, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted.

Dealers to keep an account of the marine stores bought by them.

XIII. And for the further and more effectual prevention of fraud in this respect, be it enacted, That all dealers in such marine stores as aforesaid, within the limits of the Cinque Ports, two ancient towns, and their members, shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof; and also, that before the party who shall have obtained such permit for the cutting up of any such cable or cordage (as hereinbefore required to be obtained) shall proceed to cut up the same by virtue thereof, there shall be published by the space of one week at least before the time of cutting up of the same, one or more advertisements in some public newspaper printed within the counties of *Kent*, *Sussex*, and *Essex*, and near to the usual residence or place of abode of such party, notifying that such party had obtained such permit for the purpose of cutting up such quantity of cable or cordage, and of such kind and quality as therein described, a true copy of which permit shall be inserted in such advertisement; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect, and shall have verified upon oath the fact of such his, her or their suspicion before any of the persons duly authorized to act as magistrates within the limits aforesaid, by warrant of such magistrate to him or them for that purpose thereupon granted, to require of and from any such dealer who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him to be kept, and to inspect and examine the cable or cordage described in such permit; and in case any such dealer shall, when so thereunto required as aforesaid, neglect or refuse to produce to the person named in such warrant as the person on whose oath the same had been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars hereinbefore required to be entered shall be made, or to permit such inspection and examination as aforesaid, or shall, after obtaining such permit for the cutting up of any cable or cordage, and before the

Notice to be advertized before cutting up cable or cordage.

Penalty for refusing to produce the book of entries, or neglecting to give notice before cutting up cable or cordage.

the cutting up of the same, neglect to publish such one or more advertisements relative thereto, as is hereinbefore directed and required to be published, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned, shall forfeit and pay for every such offence, being his, her or their first offence, any sum not exceeding twenty pounds, nor less than ten pounds; and for every second and further offence, any sum not exceeding fifty pounds, nor less than thirty pounds; one half of which penalties shall, on conviction before any of such magistrates duly authorized to act within the limits aforesaid, be paid to the informer, and the other half to the poor of the parish in which such offence shall be committed; and in case any of the penalties by this Act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by the warrant of such magistrate as aforesaid, by distress upon the goods and chattels of every such offender or offenders; and in case there shall be no sufficient distress, then every such offender or offenders shall and may be committed by such magistrate as aforesaid, to the common gaol within the limits aforesaid, in the case of any first offence, for the space of three months, and in the case of any second or further offence, for the space of six months, unless the said penalty and charges shall be sooner paid.

Penalties, how to be levied.

XIV. And be it further enacted, That the inhabitants of any parish, township or place, within the jurisdiction aforesaid, shall be deemed and taken to be competent witnesses, for the purpose of proving the commission of any offence against this Act, within the limits of such parish, township or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township, place, or otherwise for benefit or use, or in aid or exoneration of such parish, township or place.

Inhabitants to be competent witnesses.

XV. And be it further enacted, That the lord warden of the Cinque Ports for the time being, and the lieutenant of *Dover* Castle for the time being, and the deputy wardens of the Cinque Ports for the time being, and the judge official and commissary of the Court of Admiralty of the Cinque Ports, two ancient towns, and the members thereof for the time being, and any other officer who shall be specially appointed by the lord warden, and all and every of them, shall and may execute, perform, and do, within the jurisdiction aforesaid, all the acts, matters and things contained in this Act, in like manner, to all intents and purposes, as any magistrate or magistrates, or any commissioner or commissioners to be appointed by virtue of this Act, is and are authorized to execute, perform, and do the same.

The Lord Warden and his deputies, Judge, &c. to have the like power as Justices of the Peace or Commissioners under this Act.

XVI. And whereas by a certain Act passed in the twenty-eighth year of the reign of King *Henry* the Eighth, intituled *For Pirates*, it is among other things enacted to the effect following, That whenever,

Manner of issuing commissions for the punishment of of-

ever any commission for the punishment of certain offences therein named, shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the lord warden of the said port for the time being, or to his deputy, or unto three or four such persons as the lord chancellor for the time being shall name and appoint: And whereas by the said Act it is further enacted to the effect following, that every inquisition and trial to be had by virtue of such commission, shall be made and had by the inhabitants of the said five ports, or the members of the same: And whereas of a long time past, no such commission has been sent to any place within the jurisdiction of the Cinque Ports: Be it enacted, for the more certain and speedy administration of justice, that as often as His Majesty shall direct a commission, according to the provisions of the aforesaid Act, to the admiral or admirals, or his or their lieutenant deputy and deputies, it shall and may be lawful for His Majesty, on the application of the lord warden of the Cinque Ports, to direct such commission jointly to the admiral or admirals, or his or their lieutenant deputy and deputies, and also to the lord warden of the Cinque Ports for the time being, and to his deputy; and the commissioners who shall sit by virtue of such commission, so jointly addressed, to whatever shire or place in the realm the same shall be limited, shall have full power and authority to inquire into, try, and determine all offences named in the said Act, or in any other Act relating to proceedings under such commission, by the oaths of twelve good and lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdictions of the lord admiral of *England*, or of the lord warden of the Cinque Ports; and all and every trial, conviction, judgment and proceeding whatsoever under such commission, shall be as good and effectual to all intents and purposes in law, and shall be followed by the same consequences to the offender or offenders, as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid Act of King *Henry* the Eighth: Provided always, and it is hereby further declared, that this Act, or any thing herein contained, shall not extend or be construed to extend to the taking away, abridging, prejudicing or impeaching, in any manner whatever, the jurisdiction of the High Court of Admiralty of *England*, or the jurisdiction of the Admiralty Court of the Cinque Ports, two ancient towns, and their members; but that it shall and may be lawful for the said courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights, and offences, as they have heretofore had, used, exercised and enjoyed, as fully and effectually, to all intents and purposes whatever, as if this Act had not been made; any thing hereinbefore contained to the contrary in anywise notwithstanding.

fences, agreeably to 28 H. 8. c. 15.

Reservation of the rights of the Admiralty Court, and of the Admiralty of the Cinque Ports.

XVII. Provided

Reservation of the rights of the Trinity House.

XVII. Provided also, and it is hereby further enacted and declared, That this Act, or any thing herein contained, shall not extend, or be construed to extend to the taking away, abridging, hindering, prejudicing or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the Corporation of the Trinity House of *Deptford Strond*; but that the said corporation shall hold and enjoy the same as fully and effectually, to all intents and purposes, as they might have done in case this Act had never been made; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

Boundaries of the jurisdiction of the Lord Warden of the Cinque Ports.

XVIII. And whereas doubts have arisen as to the exact boundaries of the jurisdiction of the lord high admiral and the lord warden of the Cinque Ports, and it is highly expedient for the purposes of this Act that the same should be clearly set forth; now it is hereby declared and enacted, That the boundaries of the jurisdiction of the lord warden of the Cinque Ports, in regard to any matter or thing contained in this Act, shall be and shall be deemed and taken to be as follows; (that is to say), from a point to the westward of *Seaford*, in the county of *Sussex*, called *Red Cliff*, including the same; thence passing in a line one mile without the sand or shoal called *The Horse of Willingdon*, and continuing the same distance without the ridge and new shoals; and thence in a line within five miles of *Cape Grisnez* on the coast of *France*; thence round the shoal called *The Overfalls*, two miles distance from the same; thence in a line without, and the same distance along the eastern side of the *Galloper Sand*, until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the *Galloper*, it runs in a direct line across the shoal called *The Thwart Middle*, till it reaches the shore underneath the *Maze Tower*; from thence following in a line of the shore up to *Saint Orsyth*, in the county of *Essex*, and following the course of the shore up to the river *Coln* to the landing-place nearest *Brightlingsea*; from thence in a direct line to *Shoe Bacon*; from thence to the point of *Shellness*, on the isle of *Shippey*; and from thence across the waters to *Feversham*; and from thence following the line of coast round the *North* and *South Forelands*, and *Beachy Head*, till it reaches the said *Red Cliff*, including all the waters, creeks, and havens comprehended between them: Provided always, and it is hereby declared, that nothing in this Act contained shall extend, or be construed to extend, to enlarge or abridge the local limits of the ancient jurisdiction, rights, and privileges of the lord high admiral of *England*, or the lord warden of the Cinque Ports respectively, or their respective representatives; but that the same shall remain according to ancient usage, and that the description hereinbefore contained shall only be deemed applicable to the purposes of this Act; any thing herein contained to the contrary notwithstanding.

XIX. And

XIX. And whereas it is expedient that the like means of conclusively adjusting and recovering the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship, vessel or goods, should subsist and be by law applicable in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officer, mariners or owners of any ship or vessel in distress, as are now by law provided for adjusting the quantum of such monies or gratuities which shall have become due in cases where application shall have been first made to officers of the customs, or other the officer or officers in that behalf named and appointed in and by a certain statute made in the twelfth year of the reign of our late sovereign Lady Queen *Anne*, intituled, *An Act for preserving of all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and where assistance shall have been thereupon rendered in pursuance of the provisions of that statute; be it therefore enacted and declared, That all and every the means which, in virtue of the statute last-mentioned, subsist, and may now be by law applied for the conclusively adjusting, and for the recovering of the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship, vessel or goods, in cases where application shall have been first made pursuant to that statute, to officers of the Customs, or other the officer or officers therein in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of that statute, shall be by law applicable and available, in like manner to all intents and purposes, in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officers, mariners or owners of any ship or vessel in distress, although no such application shall have been made to, nor any authority or assistance derived from, any officers of the customs, or other the officer or officers in the said statute in that behalf mentioned; and that, upon payment or tender and refusal of the quantum of monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, or security being given for the due payment thereof, to the satisfaction of the commissioners who shall have adjusted such quantum of gratuities, it shall not be lawful for any officer of the customs, or other person or persons having the possession or custody of such ship, vessel or goods, any longer to retain the possession or custody of the same, or any part thereof, by reason or pretence of any claim or right to a compensation or gratuity for such salvage as aforesaid, or for having acted or been employed therein.

For the better adjustment and payment of salvage under 12 Ann. c. 18.

Owners or salvors may sell so much of the property saved as will defray salvage.

XX. And be it further enacted and declared, That in all cases it shall be lawful for the owner or owners, or if the owner or owners refuse, for the salvors, to sell so much of the property saved, as will be sufficient to defray the salvage adjudged, and all expences attending the same, and such other reasonable charges and expences respecting the said property, as shall be allowed by the High Court of Admiralty, or by the Court of Admiralty of the Cinque Ports, or by the commissioners appointed under this Act; and that on the production of an order or decree from the High Court of Admiralty, or from the Court of Admiralty of the Cinque Ports, or of an award made by the commissioners appointed under this Act, the commissioners of customs and excise shall be empowered and required, and they are hereby empowered and required, to allow the sale of such goods as aforesaid, free from the payment of all duties: Provided nevertheless, that in all cases in which they may think it advisable, it shall be lawful for the commissioners of the customs and excise to refer any such award which may be produced to them from the commissioners appointed under this Act, to the judgment or revision of the High Court of Admiralty.

Jurisdiction of Cinque Ports not to be affected

XXI. Provided always, That nothing herein in this behalf contained shall extend, or be construed to extend, to affect or impeach the jurisdiction to be exercised within the Cinque Ports, or to affect or abridge in any degree the jurisdiction or authority of the High Court of Admiralty.

Public Act.

XXII. And be it further enacted, That this Act shall be a Public Act, and shall be judicially taken notice of as such, by all judges, justices and others, without being specially pleaded.

The Schedule to which this Act refers.

ON the day of in the Year of our Lord before, &c. at in the County of

[*Ship's Names.*]
A. B. [*here insert the name of the Salvors*] against the said ship , whereof was master, her tackle, apparel, and furniture, and the goods, wares, and merchandizes on board the same; and also against the said master, and the owners of the said ship and cargo [*or, as the case may be,* against certain goods and merchandizes lately laden on board the said ship, whereof was master; and also against the said master, and the owners *(or if the owner's alone appear by themselves or agents, then leave out the master's name)* of the said goods and merchandizes], in a cause of salvage.

[*Masters Names.*]
On which day appeared personally *W. Z.* of and *Y. Z.* of who produced themselves as sureties for the said the master, and for the owners of the said ship and cargo, [*or, as the case may be*] for the said master and owners of the said goods and merchandizes, and submitting themselves to the jurisdiction of the High Court of Admiralty of England, [*or,* the Court of Admiralty for the Cinque Ports, *as the case may be*] bound themselves, their heirs, executors and administrators, for the said master and owners of the said ship and cargo, [*or, as the case may be*] for the said master and owners, *or,* for the owners of the said goods and merchandizes, in the sum of pounds of lawful money of Great Britain, unto the said *A. B.* &c. to answer the salvage and expences of the said ship and cargo, [*or, as the case may be*], on the said goods and merchandize, as shall hereafter be decreed by the said Court, according to the tenor of the Act in that behalf made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum above mentioned.

This bail was duly taken, acknowledged, and received at the time and place above written, before me the undersigned Commissioner; and I do hereby further certify, that I do believe and consider the persons above mentioned sufficient security for the sum of pounds.

W. Z.
Y. Z.

N° XIII.

STATUTES RELATING TO THE WAGES OF MERCHANT SEAMEN.

2 *Geo.* II. *Cap.* 36.

AN ACT for the better Regulation and Government of Seamen in the Merchants Service.

'WHEREAS the welfare and riches of this kingdom greatly 'depend on the trade and navigation thereof, the same being 'of great use and benefit, and tending very much to enrich 'the subjects thereof, upon which great numbers of the artificers 'and manufacturers livelihoods wholly depend; and whereas, for 'several years last past, the navigation carried on by the mer-'chants to parts beyond the seas, hath been, and doth still re-'main, under very great difficulties and expences, by the uncer-'tainty they labour under by seamen and mariners, who ship 'themselves on board merchant ships, and after they have so 'done, neglect their duty, and will not remain on board their 'ships or vessels to discharge their duty; and very often, when 'ships and vessels come to be cleared out, in order to proceed 'on their respective voyages, the seamen refuse to proceed with 'them, without coming to new agreements for increasing their 'wages, and many of them will leave their ships and vessels, and 'not proceed on their voyages, which puts the owners of such 'ships and vessels to great trouble and charges to get other 'sailors or mariners in their stead, and often is a means to over-'set the voyages of such ships and vessels, to the great prejudice 'of the owners and freighters of the goods on board the said 'ships and vessels; and yet such seamen and mariners, after 'they have committed such offences and disorders, will bring 'actions against the owners or masters of the said ships and 'vessels for the recovery of their wages, from the time of their 'shipping themselves unto the time they quit the said ships and 'vessels: And whereas many of the said seamen and mariners 'will neglect their duty when on board at sea, and desert their 'ships and vessels in foreign parts, which puts the said owners 'of ships and vessels to very great difficulties and expences, to 'get others in their stead, to bring their ships and vessels home; 'and afterwards such seamen and mariners insist on recovering 'their wages, notwithstanding their voluntary desertion; all 'which is a great discouragement to trade and navigation: 'Therefore, in order to prevent such practices for the future, 'may it please your Majesty, that it may be enacted;' and be it enacted by the King's most excellent Majesty, by and with the

the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and twenty-nine, it shall not be lawful for any master or commander of any ship or vessel bound to parts beyond the seas, to carry any seaman or mariner, except his apprentice or apprentices, to sea, from any port or place where he or they were entered, or shipt, to proceed on any voyage to parts beyond the seas, without first coming to an agreement or contract with such seamen or mariners for their wages, which agreement or agreements shall be made in writing, declaring what wages each seaman or mariner is to have respectively during the whole voyage, or for so long time as he or they shall ship themselves for; and also to express in the said agreement or contract the voyage, for which such seaman or mariner was shipt, to perform the same; and in case any master or commander of any ship or vessel shall carry out any seaman or mariner, except his apprentice or apprentices, upon any voyage to parts beyond the seas, without first entering into such agreement or contract as aforesaid, and he and they signing the same, such master or commander shall forfeit and pay the sum of five pounds for every such seaman or mariner, which he shall carry to sea, without entering into such agreement in writing as aforesaid, to the use of *Greenwich* Hospital, to be recovered upon information on the oath of one or more witness or witnesses, before any one or more of His Majesty's justice or justices of the peace, who are hereby authorized and required to issue out his or their warrant or warrants to bring before him or them such master or commander of any such ship or vessel; and in case he or they refuse to pay such penalty or forfeiture as aforesaid, to grant his or their warrant or warrants, to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol of the city, county, town or place, there to remain until he or they shall pay the same.

No masters of ships to proceed on a voyage without agreeing with the mariners for wages,

apprentices excepted,

on forfeiture of 5 *l.* for each mariner.

II. And be it further enacted, That if any seaman or mariner enter or ship himself on board any merchant ship or vessel, on any intended voyage for parts beyond the seas, he and they so entering themselves as aforesaid, shall, and they are hereby obliged to sign such agreement or contract within three days after he or they shall have entered themselves on board any ship or vessel, in order to proceed on any voyage, as aforesaid; which agreement or agreements, or contracts, after the signing thereof, shall be conclusive and binding to all parties, for and during the time or times so agreed or contracted for, to all intents and purposes; any custom or usage to the contrary in anywise notwithstanding.

Mariners to sign the agreement.

Penalty on mariners deserting.

III. And be it enacted and declared by the authority aforesaid, That in case any seaman or mariner shall desert, or refuse to proceed on the voyage on board any ship or vessel, bound to parts beyond the seas, as aforesaid, or that shall desert from the ship or vessel, to which he or they shall belong, in parts beyond the seas, after he or they shall have signed such contract or agreement, he or they shall forfeit to the owners of such ship or vessel the wages which shall be due to him or them at the time of his or their deserting from such ship or vessel, or obstinately refusing to proceed on such voyage.

Justices of the Peace may commit deserters to the House of Correction.

IV. And be it further enacted, That in case any such seaman or mariner shall desert, or absent himself from any such ship or vessel, after he or they have entered into and signed such contract or agreement to proceed upon any voyage to parts beyond the seas, as aforesaid, upon application made to any of His Majesty's justices of the peace, within their respective jurisdictions, by the master or commander, owner or owners, or other person or persons having charge of the said ship or vessel, to which such seaman or mariner did belong, it shall and may be lawful for such justice or justices, and they are hereby required, to issue forth his or their warrant or warrants to apprehend such seaman or mariner; and in case he or they shall refuse to proceed on the voyage, for which he or they entered into contract or agreement to perform, as aforesaid, and shall not give a sufficient reason for such refusal, to the satisfaction of such justice or justices, then to commit such seaman or mariner to the House of Correction, there to be kept to hard labour, not exceeding thirty days, nor less than fourteen days; any thing to the contrary notwithstanding.

Penalty on mariners absenting from the ship without leave.

V. And be it enacted by the authority aforesaid, That in case any seaman or mariner shall absent himself from the ship or vessel, to which he shall belong, without leave from the master or commander or other chief officer, having the charge of such ship or vessel, every such seaman or mariner shall, for every such day's absence, forfeit two days pay to the use of *Greenwich* Hospital, to be recovered, applied, and disposed of, as is hereinafter directed by this Act.

Penalty for leaving the ship before discharged.

VI. ' And whereas seamen and mariners, after their ships ' arrival at their unlivering port in *Great Britain*, ofttimes leave ' the ships and vessels before they are unladen, or before the ' said seamen and mariners are discharged by the masters or ' commanders of such ships and vessels; in order to prevent ' such practices for the future:' Be it further enacted by the authority aforesaid, That in case any seaman or mariner, not entering into the service of His Majesty, his heirs and successors, shall leave such ship or vessel, to which he or they belong, before he or they shall have a discharge in writing from the master or commander, or other person having the charge of such ship or vessel, he or they so leaving such ship or vessel shall forfeit one month's

month's pay, to be recovered, applied, and disposed of, as is hereinafter directed.

Masters to pay mariners wages in 30 days after coming home.

VII. And be it further enacted by the authority aforesaid, That upon the arrival of any ship or vessel into *Great Britain*, from parts beyond the seas, the masters or commanders of such ships or vessels shall be, and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages, if demanded, in thirty days after the said ships or vessels being entered at the Custom-house, except in case where a covenant shall be entered into to the contrary, or at the time the said seamen and mariners shall be discharged, which shall first happen, if demanded, deducting out of such wages the penalties and forfeitures by this Act imposed, under the penalty of paying to each seaman or mariner that shall be unpaid, contrary to the intent and meaning of this Act, twenty shillings over and above the wages that shall be due to each person, to be recovered by the same means and methods, as the wages may be recovered; and such payment of wages aforesaid shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

In case of suit for wages, master obliged to produce the agreement.

VIII. And be it further enacted, That no seaman or mariner by entering into or signing such contract or agreement, as aforesaid, shall be deprived of or hindered from using any means or methods for the recovery of wages against any ship, the master or owners thereof, which he may now lawfully make use of, and that in all cases where it shall or may be necessary that the contract or agreement in writing aforesaid should be produced in court, no obligation shall lie on any seaman or mariner to produce the same, but on the master, owner or owners of the ship, for which the wages shall be demanded; and no seaman or mariner shall fail in any suit, action, or process for recovery of wages for want of such agreement or contract being produced; any law, usage, or custom to the contrary notwithstanding.

Masters to deduct out of seamen's wages all penalties due to *Greenwich* Hospital.

IX. And be it further enacted, That the masters, or commanders, or owners of any ships or vessels shall and they hereby have full power to deduct, out of the wages of any seaman or mariner, all the penalties and forfeitures to be incurred by this Act, and to enter them in a book or books to be kept for that purpose, and to make oath, if required, to the truth thereof; which book or books shall be signed by the said master or commander of each ship or vessel respectively, and two or more principal officers belonging to such ships or vessels, setting forth that the penalties and forfeitures contained in such book or books, are the whole penalties and forfeitures stopt from any seamen or mariners during the whole voyage; which penalties and forfeitures (except the forfeiture of wages to the owners on the desertion of any seaman or mariner, or on refusing to proceed on the voyage) shall go to, and be applied to the use of *Greenwich* Hospital, and

not otherwise, to be paid and accounted for by the masters and commanders of ships and vessels coming from parts beyond the seas, to the same officer or officers, at any port or place, who collects the sixpence *per* month, deducted out of seamen's wages, for the use of the said Hospital; which officer shall have, and hereby hath, full power to administer an oath to every commander or master respectively, touching the truth of such penalties and forfeitures, to be paid, applied, and disposed of, as aforesaid.

Forfeitures to be paid to the Hospital within 3 months.

X. And be it further enacted, That in case any masters, or commanders, or owners of any ships or vessels, shall deduct out of the wages of any seamen or mariners, any of the penalties and forfeitures, which by this Act are directed to be deducted, and applied to and for the use of *Greenwich* Hospital, and shall not pay the money so deducted to some officer or officers, who collect the sixpence *per* month, deducted out of seamen's wages, for the use of the said Hospital, in the port or place where such deduction shall be made, within three months after such deduction, every person so neglecting to pay the money deducted, as aforesaid, shall forfeit and pay treble the value thereof, to the use of the said Hospital; which, together with the money deducted, as aforesaid, shall and may be recovered by the same means and methods, as any penalties and forfeitures for not duly paying the said sixpence *per* month can or may be recovered

Public Act.

XI. And be it further enacted, That this Act shall be deemed and taken to be a Public Act; and all judges and justices are hereby obliged to take notice of it as such, without special pleading the same.

Act not to debar seamen from entering into his Majesty's service.

XIII. Provided, That nothing in this Act contained shall extend, or be construed to extend, to debar any seaman or mariner belonging to any merchant ship or vessel from entering, or being entered into, the service of His Majesty, his heirs and successors, on board any of his or their ships or vessels; nor shall such seaman or mariner, for such entry, forfeit the wages due to him, during the time of his service in such merchant ship or vessel; nor shall such entry be deemed a desertion.

N.B. This Act was made for five years only; but was continued by 23 *Geo.* 2. c. 26. and made perpetual by 2 *Geo.* 3. c. 31. sect. 1.

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2 *Geo.* III. *Cap.* 31.

AN ACT for making perpetual an Act for the better Regulation and Government of Seamen in the Merchants Service; and for extending the Provisions thereof to His Majesty's Colonies in *America*.

From and after 1 *May* 1764, all

II. And be it further enacted by the authority aforesaid, That from and after the first day of *May* one thousand seven hundred and

and sixty-four, all the provisions, penalties, clauses, matters, and things, contained in the said Act of the second year of his said late Majesty's reign, shall be, and the same are hereby, extended to all His Majesty's colonies in *America*; and that all penalties and forfeitures to be incurred by the said Act, and directed to be applied to and for the use of *Greenwich* Hospital, shall be paid to such officer or officers in the said colonies, as shall on that behalf be appointed by the lord high admiral of *Great Britain*, or the commissioners for executing the office of lord high admiral of *Great Britain*, for the time being: And in case any masters or commanders, or owners, of any ships or vessels shall deduct out of the wages of any seaman or mariner any of the penalties and forfeitures which, by the said Act, are directed to be deducted and applied to and for the use of *Greenwich* Hospital, and shall not pay the money so deducted to such officer or officers so to be appointed in the port or place in the said colonies where such deduction shall be made, within three months after such deduction, every person so neglecting to pay the money deducted as aforesaid, shall forfeit and pay the treble value thereof to the use of the said Hospital; which, together with the money deducted as aforesaid, shall and may be recovered by the same means and methods as any penalties and forfeitures can or may be recovered by the said Act.

the provisions, penalties, matters, and things, in the said Act of 2 *Geo.* 2. are extended to His Majesty's colonies in *America*; and the forfeitures applicable to *Greenwich* Hospital are to be paid there to the officer constituted by the Admiralty; and masters of ships deducting any of the said forfeitures out of the seamen's wages, and not duly paying over the same, forfeit treble the value to the use of the said Hospital.

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31 *Geo.* III. *Cap.* 39.

AN ACT for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom.

Preamble.

'WHEREAS by an Act made and passed in the second year 'of the reign of his late Majesty King *George* the Second, in- 'tituled, *An Act for the better Regulation and Government of* 'Seamen in the Merchants Service, certain provisions are esta- 'blished for the government of seamen in ships trading to parts 'beyond the seas, which have been found, by experience, to be 'highly beneficial to the trade and navigation of this kingdom: 'And whereas the coast trade of this kingdom still remains under 'great difficulties and inconveniences, for want of the like regu- 'lations to be applied to, and established in the same, for the 'better government thereof: May it therefore please your Ma- 'jesty, that it may be enacted;' and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *July* one thousand seven hundred and

2 *Geo.* 2. cap. 36, recited.

From *July* 1, 1791, no masters of vessels

trading *Coastwise*, to proceed on a voyage without entering into an agreement with the seamen for wages, on penalty of 5*l.* for each.

and ninety-one, it shall not be lawful for any master or commander, or other person having or taking the charge or command of any ship or vessel trading from and to any port or place, or ports or places in *Great Britain*, to carry out to sea any seaman or mariner (except his apprentice or apprentices) from any port or place in *Great Britain*, to proceed on any voyage to any other port or place in *Great Britain*, without having before entered into an agreement or agreements in writing with such seaman or mariner, to be signed as well by such master or commander, or other person as aforesaid, as by such seaman or mariner, for the wages which such seaman or mariner is to have respectively, during the voyage or voyages, or during the time he shall have contracted or entered himself for: which contract or agreement shall declare what wages each seaman or mariner is to have, and when the same shall be payable, and for what time, or for what voyage or voyages such seaman or mariner shall have contracted or entered himself, every such agreement or agreements to be in force at the time of proceeding to sea on any such voyage; and in case any master or commander, or other person having or taking the charge or command of any ship or vessel trading coastwise as aforesaid, shall carry out to open sea any seaman or mariner (except his apprentice or apprentices) upon any such voyage by open sea, without having first entered into such agreement or agreements signed as aforesaid, and such agreement or agreements then being in full force, such master or commander, or other person having or taking the charge or command of such ship or vessel, shall forfeit and pay the sum of five pounds for every such seaman or mariner which he shall so carry out to open sea, to the use of *Greenwich* Hospital, to be recovered upon information, on the oath of one or more witness or witnesses, before any one or more of His Majesty's justice or justices of the peace of any county, riding, shire, or place in *Great Britain*, where such ship or vessel shall depart from or come to in or during such voyage, who are hereby authorized and required respectively to issue out his or their warrant or warrants to bring before him or them such master or commander, or other person having or taking the charge or command of any such ship or vessel; and in case such master or commander, or other person as aforesaid, shall neglect or refuse to pay such penalty or forfeiture as aforesaid, to grant his or their warrant or warrants to levy the same by distress and sale of the offender's goods, and in case no distress can be found, to commit the offender to the common gaol of the city, county, town or place, there to remain until he shall pay the same.

Agreement to be binding.

II. And be it further enacted, That every seaman or mariner entering himself on board any ship or vessel trading coastwise as aforesaid, for any intended voyage or voyages, or for any time to be stipulated in and by such agreement or agreements, shall, and he

he is hereby required and obliged to subscribe his signature or mark to such agreement or agreements respectively, at the time of his so entering himself; which agreement or agreements, after the same shall be so subscribed by such seaman or mariner, and signed by the master or commander, or other person having or taking the charge or command of such ship or vessel, shall be conclusive and binding to all parties, for and during the time or times so agreed or contracted for, to all intents and purposes; any law, custom or usage, to the contrary in anywise notwithstanding.

Penalty on seamen neglecting or refusing to proceed on voyages for which they shall have engaged.

III. And be it further enacted by the authority aforesaid, That in case any seaman or mariner, after he shall have entered into such agreement or agreements as aforesaid, shall neglect or refuse to proceed on the intended voyage or voyages for which he shall have entered, or upon which such ship or vessel shall be destined to proceed, every such seaman or mariner shall forfeit and pay to the owner or owners of such ship or vessel, all such wages as shall be due to him at the time of his so neglecting or refusing to proceed on such voyage or voyages; and it shall and may be lawful, upon complaint made of the same to any of His Majesty's justices of the peace within their respective jurisdictions, by the master or commander, owner or owners, or any other person or persons having charge or command of the ship or vessel to which such seaman or mariner did belong, for such justice, and he is hereby required to issue his warrant to apprehend such seaman or mariner; and in case such seaman or mariner shall refuse to proceed on the voyage or voyages agreed on, or on the voyage or voyages on which the ship or vessel shall be destined to proceed, within the time contracted for, and shall not give a sufficient reason for such refusal, to the satisfaction of such justice, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour for any time not exceeding *thirty* days, nor less than *fourteen* days.

Penalty on seamen absenting themselves, or deserting before the expiration of the time for which they shall have engaged.

IV. And be it enacted by the authority aforesaid, That in case any seaman or mariner, after having entered into such agreement or agreements as aforesaid, shall wilfully absent himself from the ship or vessel to which he shall belong, before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded, shall be completed, and the cargo of such ship or vessel delivered, or before the time for which he shall have contracted or entered shall be expired, every such seaman and mariner shall, for every day he shall be so absent from his said ship or vessel, forfeit two days pay to the use of *Greenwich* Hospital, to be recovered, applied, and disposed of as is hereinafter directed; and in case any seaman or mariner, not entering into the service of His Majesty, his heirs or successors, shall totally leave or quit his said ship or vessel before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded,

ceeded, shall be completed, and the cargo of such ship or vessel delivered, or before the expiration of the time for which he shall have contracted or entered, or before such seaman or mariner shall have a discharge in writing from the master or commander, or other person having the charge or command of such ship or vessel, such seaman or mariner so leaving or quitting such ship or vessel, shall forfeit one month's wages, to be recovered, applied, and disposed of as hereinafter is directed.

Masters to settle with the men for their wages, in the manner herein directed, on penalty of 20*s*.

V. And be it further enacted by the authority aforesaid, That the master or commander, or other person having or taking the charge or command of any ship or vessel employed in trading coastwise as aforesaid, and contracted with any seaman or mariner to perform any such voyage, shall, and he is hereby obliged and required to pay to every such seaman or mariner belonging to such ship or vessel their wages, if demanded, within *five* days after such ship or vessel shall have entered at the Custom-house, or the cargo shall be delivered, or at the time the said seaman or mariners shall be discharged, which shall first happen, unless an agreement shall have been made or entered into to the contrary, in which case the wages of such seamen or mariners shall be paid in terms of such agreement, after deducting, in every such case, out of such wages, the penalties and forfeitures by this Act imposed, in case any shall have been incurred, upon pain of forfeiting to each seaman or mariner, to whom payment of his wages shall not have been made according to this Act, of the sum of twenty shillings, to be paid to each such seaman or mariner, over and above the wages that shall be due to him, to be recovered by the same means and methods as the wages of seamen or mariners may by law be recovered; and such payment of wages as aforesaid shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

Seamen not deprived of the usual means for recovery of wages, and, in case of dispute, the master to produce the agreement.

VI. And be it further enacted, That no seaman or mariner, by entering into or signing such contract or agreement as aforesaid, shall be deprived of, or hindered from, using any means or methods for the recovery of wages against any ship, or the masters or owners thereof, which he may now lawfully make use of; and that in all cases where it shall or may be necessary that the agreement or agreements in writing aforesaid should be produced in Court or elsewhere, no obligation shall lie on any seaman or mariner to produce the same, but such obligation shall lie on the master or commander, or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail, in any suit, action, or process for recovery of wages, for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made; any law, usage, or custom, to the contrary notwithstanding.

VII. And

VII. And be it further enacted, That the masters or commanders, or owners of any such ships or vessels, or other persons having the charge or command thereof, shall and they hereby have full power and are required to deduct, out of the wages of any seaman or mariner incurring the penalties and forfeitures imposed by this Act, whenever the same shall be incurred, and to enter them in a book or books to be kept for that purpose, and to make oath, if required, to the truth thereof; which book or books shall be signed by the said master or commander, or other person having the charge or command of each such ship or vessel respectively, setting forth that the penalties and forfeitures contained in such book or books are the whole penalties and forfeitures stopt from any seamen or mariners by such master or commander, or other person as aforesaid; and which penalties and forfeitures (except the forfeiture of wages to the owners on any seamen or mariners refusing to proceed on their voyage or voyages) shall go to and be applied to the use of *Greenwich* Hospital, and shall be paid and accounted for by the masters, commanders, and other persons having the charge or command of such ships or vessels, to the officer of any port or place who shall collect the sixpence *per* month deducted out of seamen's wages for the use of the said Hospital, which officer shall have and hereby hath full power to administer an oath to every commander, master, or other person as aforesaid, respectively, touching the truth of such penalties and forfeitures.

Penalties to be deducted out of the men's wages, and applied (except those to the owners) to the use of *Greenwich* Hospital.

VIII. And be it further enacted, That in case any masters or commanders, or owners of any such ships or vessels, or other person having the charge or command thereof, shall deduct out of the wages of any seamen or mariners any of the penalties and forfeitures which by this Act are directed to be deducted and applied to and for the use of *Greenwich* Hospital, and shall not pay the money so deducted to some officer who shall collect the sixpence *per* month deducted out of seamen's wages for the use of the said Hospital, in the port or place where such deduction shall be made, within three months after such deduction, every such person, so neglecting to pay the money so deducted as aforesaid, shall forfeit and pay treble the value thereof to the use of the said Hospital; which, together with the money deducted as aforesaid, shall and may be recovered by the same means and methods as any penalties and forfeitures for not duly paying the said sixpence *per* month can or may be recovered.

Penalty on masters not paying the penalties in 3 months after being so deducted.

IX. And be it further enacted by the authority aforesaid, That in all cases where the seamen or mariners of any ship or vessel trading coastwise as aforesaid have contracted, or shall contract, for wages by the voyage, and not by the month, or other stated period of time, the penalties and forfeitures to be incurred by such seamen or mariners under this Act, shall be ascertained in manner following; (that is to say), if the whole time

How penalties are to be ascertained where the seamen contract for the voyage.

time spent in the voyage agreed or proceeded upon shall exceed one lunar month, the forfeiture of one month's pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages, as a lunar month shall bear to the whole time spent in the voyage; and in like manner the forfeiture of two days pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages, as two days shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed one lunar month, the forfeiture of one month's pay shall be accounted and deemed a forfeiture of the whole wages contracted for; and if such time shall not exceed two days, the forfeiture of two days pay shall be accounted and deemed a forfeiture of the whole wages contracted for.

Agreements not liable to stamp duties. This Act not to extend to vessels under 100 tons burthen, nor to debar seamen from entering into His Majesty's service.

X. Provided always, and it is hereby enacted, That no agreement or agreements, to be made by virtue or under the authority of this Act, shall be or be deemed liable to, or charged with, any stamp duties whatsoever: And provided also, that nothing herein contained shall extend or be construed to extend to any ship or vessel trading coastwise as aforesaid, or to any master or commander, seamen or mariners, belonging thereto, unless such ship or vessel shall be of the burthen of one hundred tons, or upwards, and shall go to open sea: And provided also, that nothing in this Act contained shall extend or be construed to extend to debar any seaman or mariner, belonging to any such ship or vessel, from entering or being entered into the service of His Majesty, his heirs or successors, on board any of his or their ships or vessels, nor shall such seaman or mariner for such entry forfeit the wages due to him during the term of his service in such ship or vessel, nor shall such entry be deemed a desertion.

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37 *Geo.* III. *Cap.* 73.

AN ACT for preventing the Desertion of Seamen from British Merchant Ships trading to His Majesty's Colonies and Plantations in the *West Indies*.

Preamble.

'WHEREAS seamen and mariners, after entering into articles to serve on board British merchant ships, during the voyages from *Great Britain* to His Majesty's colonies and plantations in the *West Indies*, and back to *Great Britain*, do frequently desert from such ships on their arrival at or in such colonies and plantations, on account of the exorbitant wages given by masters and commanders of other British merchant ships, by the run or gross, to seamen and mariners, when in such colonies or plantations, to induce them to enter on board their ships: And whereas such seamen and mariners, upon

'entering

'entering into articles for such voyages from *Great Britain*, 'usually receive large sums of money in advance, for the purpose 'of their outfit; and monthly allowances are frequently paid to 'their families, towards their support and maintenance, during 'the absence of such seamen and mariners: And whereas such 'desertions have been the means of depriving many merchant 'ships of a sufficient number of seamen and mariners to navigate 'them back to *Great Britain*, and thereby occasioned great 'losses to the merchants trading to the said colonies and plan-'tations:' For remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *July* one thousand seven hundred and ninety-seven, all and every seaman, mariner, and other person, who shall desert, at any time during the voyage, either out or home, from any British merchant ship trading to or from the said colonies or plantations, shall, over and above all punishments, penalties and forfeitures, to which he is now by law subject, forfeit all the wages he may have agreed for with, or be entitled to during the voyage, from the master or owner of the ship on board of which he shall enter, immediately after such desertion.

From *July* 1, 1797, seamen deserting from merchant ships to or from the *West Indies*, to forfeit their wages on board the ship entered into after such desertion.

II. And be it further enacted, That all and every master or commander of any British merchant ship who shall, from and after the said first day of *July* one thousand seven hundred and ninety-seven, hire or engage to serve on board his ship or vessel any seaman, mariner, or other person who shall, to the knowledge of such master, have deserted from any other ship or vessel, shall forfeit and pay the sum of one hundred pounds, to be recovered levied, and applied, as hereinafter directed.

Masters hiring seamen who have deserted from any other ship, to forfeit 100*l.*

III. And be it further enacted, That no master or commander of any merchant ship or vessel which shall, from and after the first day of *July* one thousand seven hundred and ninety-seven, sail or proceed from any port or place in *Great Britain*, shall hire or engage, or cause or procure to be hired or engaged, any seaman, mariner, or other person, at any port or place within His Majesty's colonies or plantations in the *West Indies*, to serve on board any such merchant ship or vessel at or for greater or more wages or hire for such service than according to the rate of double monthly wages, contracted for with the seamen, mariners, and other persons, hired or engaged to serve on board such ship or vessel at the time of her then last departure from *Great Britain*, being in the same degree and station in which such seaman, mariner, or other person, shall be so hired or engaged at any such port or place as aforesaid, unless the governor, chief magistrate, collector, or comptroller of such port or place in the said colonies

No master sailing from *Great Britain* after *July* 1, 1797, shall hire seamen in the *West Indies* at more than double wages, unless authorized by the governor, &c.

nies or plantations shall think that greater or more wages or hire than double the monthly wages aforesaid should or ought to be given to such seaman, mariner, or other person as aforesaid, and do and shall accordingly authorize or direct the same to be given by writing under his hand; that then and in such case the master or commander of such ship or vessel shall and may be at liberty to pay, and the seaman, mariner, or other person on board such ship or vessel to receive, such greater or higher wages as such governor, chief magistrate, collector, or comptroller shall direct, as aforesaid; and that all contracts, bonds, bills, notes, and other securities, promises, and undertakings, which shall be made, entered into, or given, contrary to the intent and meaning of this Act, shall be null and void to all intents and purposes; and that the master or commander of any such merchant ship or vessel, or other person or persons whomsoever, who shall make, enter into, or give, or cause or procure to be made, entered into, or given, any such contract, bond, bill, note, or other security, promise, or undertaking, or who shall hire or engage, or cause or procure to be hired or engaged, any seaman, mariner, or other person, to enter on board any ship or vessel contrary to the intent and meaning of this Act, or who shall pay, or cause or procure to be paid or given, any greater or more hire or wages, or other gratuity or advantage whatsoever, to or for any seaman, mariner, or other person so hired or engaged at any such port or place within His Majesty's colonies or plantations in the *West Indies* as aforesaid, than is allowed or directed by this Act, shall, for every such offence, forfeit and pay the sum of one hundred pounds; to be recovered, levied, and applied, in the manner hereinafter directed.

Contracts contrary to this Act void, and persons entering into them, &c. to forfeit 200 *l.*

IV. And be it further enacted, That all and every master and masters of any merchant ship or merchant ships trading to His Majesty's colonies and plantations in the *West Indies*, shall have on board his or their ship or ships at the time of such ship or ships clearing out from *Great Britain*, one apprentice, who shall be under the age of seventeen years, duly indented for three years, for every hundred tons admeasurement of such ship or ships, and so in proportion for every one hundred tons which such ship or ships shall admeasure according to the certificate of registry, and the indenture or indentures of every such apprentice shall be duly enrolled at the Custom-house of the port from whence any such ship shall clear out, with the collector or comptroller, within one month after the date or execution thereof; which said apprentice and apprentices shall be, and is and are hereby exempt from serving in His Majesty's navy for the space of three years from the date of such indenture or indentures; and all and every owner or owners, or master and masters neglecting to enroll the same as aforesaid, shall, for every such offence, forfeit

Every ship trading to the *West Indies* to have one apprentice under 17 years old, for every 100 tons burthen, &c.

Apprentices exempt from serving in the navy for three years Penalty of 10*l.*

feit and pay the sum of ten pounds, to be paid in manner following; (that is to say), one moiety by the owner or owners of such ship or ships, and the other moiety by the master or masters thereof, to be levied, recovered and applied, in manner hereinafter mentioned.

for not enrolling them.

V. And be it further enacted, That all and every master and masters of such ship or ships shall, within *ten* days after their arrival out at any port or ports in the said colonies or plantations, and also within *ten* days after their arrival home at any port or ports in *Great Britain*, deliver, upon oath, to be made before the collector or comptroller of such port or ports respectively, (who is hereby authorized to administer the same), a true and exact list and description of all and every the crew on board such ship or ships at the time of their clearing out from any port or ports in *Great Britain*, and also of the crew on board the same at the time of their arrival in any port or ports in the said colonies or plantations, and also a true and exact list and description of all and every seaman, mariner, or other person who has or have deserted from such ship or ships, or who has or have died during the voyage; and also a true account of the wages due to each seaman, mariner, or other person so dying, at the time of his death, and all and every master and masters omitting, neglecting, or refusing so to do, shall, for every such offence, forfeit the sum of fifty pounds; and for which said list and account so delivered, such collector or comptroller shall be entitled to demand and receive, from the person so delivering the same, the fee of two shillings and sixpence, and no more; and it shall and may be lawful to and for all and every master and masters of any ship or ships, or other person or persons, to inspect such list and lists from time to time, as he or they may think proper; for which inspection the said collector or comptroller shall be entitled to demand and receive from the person making the same, the sum of one shilling, and no more*.

Masters of such ships within 10 days after arrival out and home, to deliver lists containing certain particulars, on penalty of 50*l.*

Collector, &c. entitled to 2*s.* 6*d.* on delivery of lists, which may be inspected on payment of 1*s.*

VI. And be it further enacted by the authority aforesaid, That no seaman, mariner or other person, who shall, at any port or place within His Majesty's colonies or plantations in the *West Indies* hire or engage himself to serve, or who shall in the said colonies or plantations enter on board any merchant ship or vessel which shall sail from *Great Britain* after the first day of *July* one thousand seven hundred and ninety-seven, shall be entitled,

No seaman entering on board any vessel in the *West Indies* which sailed from *England* after *July* 1, 1797, to

* So much of this section as requires masters within ten days of their arrival out at any port in His Majesty's colonies or plantations, and also within ten days after their arrival home, at any port within *Great Britain*, to deliver, upon oath, a true and exact list and description of all and every the crew on board, and also a list of such of the crew as shall have deserted or died during the voyage, and of the wages due to each seaman, is repealed by 6 *Geo.* 4. c. 105. s. 211.

be entitled to greater wages than herein authorized.

titled to, nor shall he sue for, recover, or receive, any greater or more wages or hire, or other gratuity or advantage whatsoever, on account of or for such his service, than such wages or hire as hereinbefore authorized or directed to be paid or received.

Wages of dead men to be paid to the receiver of the 6*d.* duty for *Greenwich* Hospital, on penalty of 50*l.* and double the wages.

VII. And be it further enacted, That all and every sum and sums of money which shall be due for wages to any seaman, mariner, or other person hired or engaged on board any British merchant ship for any voyage from any port or ports in *Great Britain* to any port or ports in the said colonies or plantations, and who has or have died on board during the voyage, shall, within three calendar months after the arrival of such merchant ship in any port or ports in *Great Britain*, be paid to the receiver of the sixpenny duty for *Greenwich* Hospital for the time being, to the use of the executor or executors, administrator or administrators, of the seaman, mariner, or other person so dying; and if any master of any such merchant ship shall neglect or refuse to pay over, or tender to the said receiver, all and every such sum and sums of money, within the time hereinbefore limited, he shall forfeit and pay, for every such offence, the sum of fifty pounds, and also double the amount of the sum or sums of money so due to any seaman, mariner, or other person, for wages, as aforesaid.

Disposition of such wages if not demanded of the receiver in three years.

VIII. Provided always, and be it further enacted, That all and every such sum or sums of money which shall not be lawfully demanded of the said receiver within the term of three years after payment thereof to him in manner aforesaid, shall be forfeited, and shall go and be paid to the use of the seamen's hospital of the port to which such ship belongs; but in case there shall be no seamen's hospital at the port to which such ship belongs, then to and for the use and benefit of the old and disabled seamen of the same port, and their families, to be distributed at the discretion of the magistrates for the county where such port shall be situate, or any two or more of them.

Disposition of penalties.

IX. And be it further enacted by the authority aforesaid, That the penalties and forfeitures given by this Act shall be paid and applied in manner following; that is to say, one-third part thereof for and towards the support of *Greenwich* Hospital; one other third part thereof for and towards the support of the seamen's hospital at the port to which the ship or vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no seamen's hospital at the port to which such ship or vessel belongs, then to and for the use and benefit of the old and disabled seamen of the same port, and their families, to be distributed at the discretion of the persons having the direction of the merchants seamen's fund at such port, or in case there shall be no such establishment there, by the magistrates or overseer of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same;

and

and that such penalty shall be recovered by bill, plaint, or information, in any of His Majesty's courts of record at *Westminster*, or such of them as do not exceed the sum of twenty pounds, upon information, on the oath of one or more witnesses, before any one or more of His Majesty's justice or justices of the peace in any part of the kingdom of *Great Britain*, who shall not reside more than ten miles from the place of abode of the person or persons complained of, which justice and justices is and are hereby authorized and required to issue out his or their warrant or warrants, to bring before him or them every person charged with any offence under this Act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods, and in case no distress can be found, to commit the offender or offenders to the common gaol of the city, town or place, within the jurisdiction of such respective justice or justices there to remain for the space of three calendar months, or until he or they shall pay the same. Recovery of penalties.

X. Provided nevertheless, and be it enacted, That nothing in this Act shall extend, or be construed to extend, to any contract or agreement which shall or may be made with any seaman, mariner, or other person hired or engaged to serve on board any merchant ship or vessel, at any port or place within His Majesty's colonies or plantations in the *West Indies*, who shall, at the time of such hiring or engagement, produce and deliver to the master and commander of such merchant ship or vessel a certificate, under the hand of the master or commander of the ship or vessel on board of which such seaman, mariner, or other person had then last served, signed in the presence of one or more witness or witnesses, stating their usual place or places of abode, thereby declaring or certifying that such seaman, mariner or other person, had been duly discharged from the ship or vessel on board of which he had so last served; and which certificate the said master or commander shall grant within three days next after application made to him by such seaman, mariner or other person, before a witness, or in default thereof shall forfeit and pay the sum of twenty pounds, to be levied, recovered and applied, in manner hereinbefore directed; nor to any contract or agreement to be made with any seaman, mariner, or other person hired or engaged to serve on board any merchant ship or vessel, which, through necessity, or on account of very hazardous service or extraordinary duty, require such contract or agreement to be made, and more wages or hire given, and of which necessity, service or extraordinary duty, proof shall be made on oath before the chief magistrate or principal officer of any port or place, or before any justice or justices of the peace of the said colonies or plantations: And provided also, that such seaman, mariner, or other person so hired or engaged to serve on board any ship or vessel, so requiring such

Act not to extend to seamen producing certificates of discharge.

Masters to grant such certificates on penalty of 20*l.*

Act not to extend to seamen hired thro' necessity, &c. of which due proof shall be made.

service, shall not have deserted from the ship or vessel on board of which he had then last served: And provided also, that no greater or higher wages or hire shall be given by any master or commander, or taken or received by any seaman, mariner, or other person as aforesaid, except in cases of such necessity, very hazardous service, or extraordinary duty, as aforesaid, than after the rate of double the monthly wages, or the wages to be settled or directed by any governor, chief magistrate, collector or comptroller, as hereinbefore directed to be paid or received as aforesaid.

After *July* 1, 1797, articles to be entered into agreeable to annexed Schedule.

XI. And be it further enacted by the authority aforesaid, That from and after the said first day of *July* one thousand seven hundred and ninety-seven, the articles to be entered into by and between the masters, seamen and mariners, of such merchant ship or ships, shall be agreeable and to the purport and effect as mentioned in the schedule hereto annexed, marked with the letter A. *

Public Act.

XII. And be it further enacted by the authority aforesaid, That this Act shall be deemed and taken to be a Public Act; and all judges and justices are hereby required to take notice of it as such, without specially pleading the same.

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59 *Geo.* III. *c.* 58.

AN ACT for facilitating the Recovery of the Wages of Seamen in the Merchant Service.

WHEREAS the seamen and mariners employed in the merchant service, and in the coasting trade of this kingdom, are exposed to great difficulties, expence and inconvenience in suing for or obtaining payment of their wages, in cases of dispute with the masters or owners of vessels in which they may have served; and it is expedient that greater facility should be given for recovery of such wages: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* in the year of our Lord one thousand eight hundred and nineteen, it shall be lawful for any seaman, mariner, or other person (except masters or apprentices), who shall have served on board any ship or vessel trading from any port or place, or ports or places, in that part of the United Kingdom called *England*, to ports beyond the seas, or to any other port or place in *Great Britain*, by virtue or in pursuance of any contract or engagement,

Justices empowered on complaint of seamen, to hear and settle disputes about wages, not exceeding 20*l.*

* The Schedule annexed to this Act is No. V. of the Appendix to this Treatise, page 493.

engagement, in writing or not in writing, and whether the same be by parol, or by deed under seal, or otherwise, in case the master or commander, or other person having or taking the charge of any such ship or vessel, after the expiration of two days from the time of entry of such ship or vessel at the Custom House, or from the delivery of her cargo, or from the time when such seaman or mariner, or other person (except as aforesaid), shall be discharged, which shall first happen (unless an agreement shall have been made and entered into to the contrary, and in that case, after the expiration of the time so stipulated or agreed for the payment of such wages as aforesaid), neglect or refuse to pay to any such seaman, mariner or other person (except as aforesaid), his or their wages, or any part thereof, to complain to any justice or justices of the peace residing in or near to the place where such ship or vessel shall have ended her voyage, or been cleared at the Custom House, or delivered her cargo, or to any justice or justices of the peace residing in or near to the place where such master or commander, or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel, where any owner or owners thereof shall then happen to be, and thereupon it shall be lawful for any such justice or justices of the peace respectively, and they are hereby required, upon such complaint made to them upon oath or affirmation, to issue a summons to such master or commander, or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander or other person in charge of any such ship or vessel) to such owner or owners thereof, to appear before them at such time and place to be in such summons specified; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, the said justice or justices shall, and they are hereby empowered to examine upon oath such seaman, mariner or other person (except as aforesaid), or any other witness or witnesses, touching any such complaint, or any difference or dispute respecting such wages, and to make such order for payment of so much wages to such seaman, mariner, or other person as aforesaid, as to such justice or justices shall seem reasonable and just; provided that the sum in question do not exceed twenty pounds so claimed to be due to any one seaman, mariner, or other person as aforesaid; and in case of refusal to pay, or non-payment of any sum or sums of money so ordered, by the space of two days next after such order and determination, such justice or justices shall and may issue forth their warrant to levy the same by distress and sale of the goods and chattels of such master or commander, or other person having or taking the charge or command of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel) of any such

On refusal to comply with Justices determination, how wages to be recovered.

ner or owners as aforesaid, rendering the overplus (if any there be) after deducting all the costs, charges and expences of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold; and in case sufficient distress shall not be found for payment and satisfaction of the amount of wages so ordered to be paid by such justice or justices, and the same, with such costs, charges and expences as aforesaid, shall not be paid within the said period of two days, it shall and may be lawful for such justice or justices of the peace, and they are hereby authorized and required, by warrant or warrants under their hands and seals, to levy the amount of the wages so ordered to be paid, together with such costs, charges and expences as aforesaid, on the ship or vessel for the service on board which such wages shall be so ordered to be paid, or any of the tackle, furniture or apparel thereof, rendering the overplus thereof (if any), after payment of such expences as aforesaid, to the master or commander or owner thereof; and the decision of such justice as aforesaid shall be final and conclusive, as well on such seaman, mariner, or other person, as upon such master or commander, or other person taking the charge or command of such ship or vessel, and the owner or owners thereof; save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within the space of seven days after the order of the said justice or justices so to be made as aforesaid.

Justice's determination to be final, unless appealed against to the High Court of Admiralty.

If seamen or others are dissatisfied, to give notice of intention to appeal.

II. And be it further enacted, That in case the seaman or mariner, or other person so claiming to be entitled to such wages as aforesaid, or the party or parties who is or are ordered to pay the same, or their agents respectively, shall be dissatisfied with such order and decision of the justice or justices, touching such wages as aforesaid, it shall be lawful for either of them respectively, within forty-eight hours after the making such order as aforesaid, but not afterwards, to give notice in writing to the justice or justices so making such order, of his, her or their desire of obtaining the judgment of the High Court of Admiralty respecting the said wages, and the order so made thereon as aforesaid, by delivering the same to such justice or justices, or leaving the same at their last or most usual place of abode; and thereupon the party so resisting or disputing the claim to such wages, or the order to be made by such justice or justices thereon, shall be compelled to proceed, within thirty days from the date of such order, by taking out a monition against the adverse party, and shall, on the service of such notice, give good and sufficient bail in double the amount of the wages so ordered to be paid as aforesaid, and which bail shall be taken by a commissioner for taking examinations in prize causes, if there shall be

be one in the port or place where such difference shall arise or order be made, but if there shall be no such commissioner there, then the said justice or justices who shall pronounce such order, or any other of His Majesty's justices of the peace, are hereby authorized to take the same; and the commissioner, justice or justices, who shall take such bail, shall certify the same according to the form contained in the Schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, and also a copy of the order so made by such justice or justices, on unstamped paper, certified under the hand or hands of such commissioner, justice or justices, taking the bail as aforesaid, and the same shall be admitted by such Court of Admiralty as evidence in the cause.

Seamen not to be deprived of agreements entered into before the passing of this Act.

III. And be it further enacted, That no seaman or mariner, or other person, by entering into or signing any contract or agreement, as required by the several Statutes now in force for that purpose, or into any covenant, stipulation or agreement, to be comprised in any such contract or agreement, which shall have the effect, or be designed or intended to have the effect, of depriving such seaman, mariner, or other person, of the remedies by this Act given for recovery of wages so due to him or them as aforesaid, shall be deprived of or hindred from using any method or means for recovery of wages, against any ship, or the masters or owners thereof, which immediately before the passing of this Act he might, and which after the said first day of *August* he may make use of; and that in all cases where it shall or may be necessary, in resorting to the remedies by this Act given for recovery of such wages as aforesaid, that the agreement or agreements in writing aforesaid should be produced before such justice or justices as aforesaid, no obligation shall be on any seaman, mariner, or other person as aforesaid, to produce the same, but such obligation shall lie on the master or commander, or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail in any complaint or proceeding before any justice or justices for recovery of wages for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made.

Not to deprive seamen of any remedy which may now be resorted to.

IV. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to deprive any seaman, mariner, or other person as aforesaid, of any remedy, means or process, which may now be resorted to or used against any ship or vessel, or the master or commander or person having the charge of such ship or vessel, or the owner or owners thereof, for the recovery of wages due for serving on board of any such ship or vessel.

Act not to extend to Scotland.

V. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to that part of the United Kingdom of *Great Britain* and *Ireland* called *Scotland*.

Public Act.

VI. And be it further enacted, that this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all judges, justices, and others whomsoever, without being specially pleaded.

Continuance of the Act.

VII. And be it further enacted, that this Act shall continue in force for seven years from the passing hereof.*

The Schedule referred to by this Act.

} ON the day of in the year
to wit. } of our Lord one thousand eight hundred and
before at in the County of
A. B. and *C. D.* appeared personally, and produced themselves as sureties for the master of the ship, and for the owners thereof, and submitting themselves to the jurisdiction of the said Court of Admiralty of *England*, bound themselves, their heirs, executors, and administrators, for the said master and owners of the said ship, in the sum of each of lawful money, of *Great Britain*, unto *E. F.* a seaman having served on board the said ship, to answer the amount of such wages as shall be hereafter decreed by the said Court to be due to the said *E. F.*, according to the tenor of the Act in that case made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, whereon the same shall be found, to the value of the sum above mentioned.

This bail was duly taken, acknowledged and received, at the time hereinbefore above written, before me the undersigned Commissioner, [*or*, as the undersigned Justice or Justices of the peace] and I [*or*, we] do believe and consider the persons above mentioned sufficient security for the sum above mentioned.

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6 *Geo.* IV. *Cap.* 107.

XV. THE master of every *British* ship arriving at any port in the *United Kingdom*, on her return from any *British* possessions in *America*, shall within ten days of such arrival, deliver upon oath to the collector or comptroller, a list containing the names and descriptions of the crew which was on board at the time of arrival in any of the said possessions, and of every seaman who has

* This Act is further continued for seven years more, by 7 *Geo.* 4. c. 59.

has deserted or died during the voyage; and also the amount of wages due at the time of his death to each seaman so dying; and every master omitting so to do shall forfeit the sum of fifty pounds; and such list shall be kept by the collector for the inspection of all persons interested therein.

VIII. The master of *every ship arriving from parts beyond the seas* at any port in the United Kingdom or in the *Isle of Man*, whether laden or in ballast, shall within twenty-four hours after such arrival, and before bulk shall be broken, make due report of such ship upon oath before the collector or comptroller of such port, and such report shall contain an account (amongst other things) *of the number of people by whom such ship was navigated, stating how many are subjects of the country to which such ship belongs, and how many are of some other country.*

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6 *Geo.* IV. *Cap.* 114.

XV. THE master of every ship arriving *in any of the British possessions* in *America*, or the *Island of Mauritius*, or the islands of *Guernsey*, *Jersey*, *Alderney*, or *Sark*, whether laden or in ballast, shall come directly and before bulk be broken to the Custom-house, for the port or district where he arrives, and there make a report upon oath (amongst other things) *of the number of the crew, and how many are of the country of such ship.*

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4 *Geo.* IV. *Cap.* 25.

AN ACT for regulating the Number of Apprentices to be taken on board *British* Merchant Vessels; and for preventing the Desertion of Seamen therefrom.

WHEREAS by an Act passed in the thirty-seventh year of the reign of his late Majesty King *George* the Third, intituled, *An Act for preventing the Desertion of Seamen from* British *Merchant Ships trading to His Majesty's Colonies and Plantations in the* West Indies, it is enacted, that all and every master and masters of any merchant ship or merchant ships, trading to His Majesty's colonies and plantations in the *West Indies*, shall have on board his or their ship or ships at the time of such ship or ships clearing out from *Great Britain*, one apprentice, who shall be under the age of seventeen years, duly indented for three years, for every one hundred tons admeasurement of such ship or ships, and so in proportion for every one hundred tons which such ship or ships shall admeasure, according to the certificate of registry: And whereas it is expedient to repeal the said provisions in respect

37 G. 3. c. 73.

So much of recited Act as requires the masters of vessels trading to the West Indies to have apprentices on board repealed.

respect to apprentices on board merchant ships trading to His Majesty's colonies and plantations in the *West Indies*, and to make other provisions in lieu thereof: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said in part recited Act as requires the master of any ship trading to His Majesty's colonies and plantations in the *West Indies* to have on board an apprentice or apprentices shall be and the same is hereby repealed.

After Jan. 1, 1824, the number of apprentices shall be proportioned to the tonnage as herein mentioned.

II. And be it further enacted, That from and after the first day of *January* one thousand eight hundred and twenty-four, all and every master and masters of any merchant ship or merchant ships, exceeding the burthen of eighty tons, shall have on board his or their ship or ships, at the time of such ship or ships clearing out from any port of the United Kingdom called *Great Britain*, one apprentice or apprentices, in the following proportion to the number of tons of her admeasurement, according to the certificate of registry; that is to say, for every ship or vessel exceeding eighty tons and under two hundred tons, one apprentice at least; for every ship or vessel of two hundred tons and under four hundred tons, two aprentices at least; for every ship or vessel of four hundred tons and under five hundred tons, three apprentices at least; for every ship or vessel of five hundred tons and under seven hundred tons, four apprentices at least; for every ship or vessel of seven hundred tons and upwards, five apprentices at least; who shall, at the period of being indentured, respectively be under the age of seventeen years: provided that every apprentice so to be employed on board any ship or vessel, as above described, shall be duly indented for at least four years; and the indenture or indentures of every such apprentice shall be duly enrolled with the collector and comptroller at the Custom-house of the port from whence any such ship or vessel shall first clear out after the execution of such indenture or indentures.

Not to affect any Act not amended or repealed by this Act, by which vessels are required to have apprentices on board.

III. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to alter or in anywise affect any Act now in force, and not amended or repealed by this Act, whereby any ships or vessels are required to have on board apprentices, and that such apprentices as shall be on board any ships or vessels conformably to the rules and regulations of any such Act, shall be counted, deemed, and reckoned in the number required by this Act.

Apprentices exempted from impressment.

IV. And be it further enacted, That every apprentice so enrolled shall be and is hereby exempted from serving in His Majesty's navy, until he shall have attained the age of twenty-one years, provided he is regularly serving his time either with his first master or ship-owner, or some other master and ship-owner to whom his indentures shall have been regularly transferred; and

all

all and every owner or owners, or master or masters, neglecting to enrol such indenture or indentures as aforesaid, or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness, or other unavoidable cause, to be certified in the log-book, after the vessel shall have cleared outwards on the voyage upon which such ship or vessel may be bound, shall for every such offence forfeit and pay the sum of ten pounds, to be paid in manner following; that is to say, one moiety by the owner or owners of such ship or vessel, and the other moiety by the master or masters thereof, to be levied, recovered, and applied in manner hereinafter mentioned.

Apprentice may be employed in any ship of which his master is captain or owner, and may be transferred.

V. And be it further enacted, That every person to whom such apprentice shall have been bound, may employ him at any time in any vessel of which such person may be the master or owner, and may also, with the consent of such apprentice, if above the age of seventeen, and if under that age, with the consent of his parents or guardians, transfer the indentures of such apprentice, by endorsement thereon, to any other person who may be the master or owner of any registered ship or vessel.

No stamp duty on transfers.

VI. And be it further enacted, That no stamp duty shall be charged on any such transfer by endorsement.

Mates of ships of a certain burthen exempt from impressment.

VII. And be it further enacted, That the first mate of every ship or vessel exceeding the burthen of eighty tons, and the first and second mate of every vessel exceeding three hundred tons burthen, shall be and they are hereby exempt from being imprest to serve in His Majesty's navy, provided they are regularly entered as such upon the articles entered into by and between the master, seaman, and mariners of such merchant ship or vessel.

Application of penalties.

VIII. And be it further enacted, That the forfeiture given as above by this Act shall be paid and applied in manner following; that is to say, one third part thereof for and towards the support of *Greenwich* Hospital; one third part thereof for and towards the support of the seamen's hospital at the port to which the ship or vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no seamen's hospital at the port to which such ship or vessel belongs, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the Merchant Seamen's Fund at such port, or in case there shall be no such establishment there, by the magistrate or overseers of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such forfeiture shall be recovered upon information on the oath of one or more witnesses before any one or more of His Majesty's justice or justices of the peace, in any part of the United Kingdom, who shall not reside more than ten miles from the place of abode of the person or persons complained of, which justice and justices is and are hereby authorized and required to issue out his or their warrant or warrants to bring before him

Recovery thereof.

him or them every person charged with any offence under this Act; and in case he or they shall refuse or neglect to pay such penalties or forfeiture as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol at the city, town or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same.

Deserters from ships to forfeit all wages, and all claims thereto.

IX. And whereas the laws now in force for the prevention of the desertion of persons composing the crews of merchant ships in foreign parts, have been found ineffectual for that object, and further provision is therefore necessary; be it enacted, That from and after the first day of *January* one thousand eight hundred and twenty-four, if any person belonging to the crew of any registered ship or vessel shall desert from the said ship or vessel during the absence of such ship or vessel from this kingdom, contrary to the articles of agreement entered into with the master, or other person having charge or command of such ship or vessel, every such person so deserting shall not only forfeit whatever wages may be due to him for his services on board of the ship or vessel from which he may have so deserted, but shall also forfeit whatever wages shall be due or have been agreed to be paid to him by or from the owner or owners, or master or other person having the charge or command of any ship or vessel in the service whereof such person may have engaged on the voyage back to this conntry.

Application of forfeited wages.

X. And be it further enacted, That the wages which shall have become forfeited by desertion as aforesaid shall be applied in the following manner; *videlicet*, to the reimbursement, in the first place, of the expences thereby occasioned to the owner or master or person having the charge or command of any ship or vessel from which the said seamen shall have so deserted; the remainder to be divided in equal proportions between *Greenwich* Hospital, and the hospital for sick and diseased seamen which may have been established at the port at which the vessel belongs, from which such person shall have so deserted; and in case that no such hospital shall have been established at the port, then the whole of the sum forfeited, after deducting the expences of the owner or master, or other person having the charge or command of such ship or vessel as aforesaid, shall be paid to and for the use of *Greenwich* Hospital.

Wages to be paid over to Greenwich Hospital, and applied, if claim be not esta-

XI. And be it further enacted, That in every such case of desertion, it shall and may be lawful for the owner or master, or other person having the charge or command of any ship or vessel, on board of which any person having so deserted shall have entered for the voyage home, upon receiving notice in writing of the time and place of desertion, from the owner or master or other

person

person having the charge or command of the vessel from which such person shall have so deserted; and such first-mentioned owner, master, or other person having the charge or command of such ship or vessel, is hereby required to deposit with the treasurer of *Greenwich* Hospital the full amount of the wages which had been agreed to be paid to such person for the said home voyage, for the purpose of being applied to the uses before mentioned, and which sum shall be applied to those uses accordingly; provided that such person shall not, within six months from the date of such deposit having been made with the treasurer of *Greenwich* Hospital as aforesaid, have established his just claim thereto before two justices of the peace residing in or near the place where such ship or vessel shall have ended her voyage, or been cleared at the Custom House, or delivered her cargo, or in the High Court of Admiralty, or in any court of record in which such person may have sued for the same: Provided always, that in every case in which it shall happen that wages are withheld from any person by any owner, master, or other person having the charge or command of any ship or vessel, upon the plea of desertion as aforesaid, and such person shall, within three months from the time when such ship or vessel shall have entered and reported at the Custom House, establish by the decision of two justices of the peace as aforesaid, or by the decree of the High Court of Admiralty, or of any court of record in which he shall have sued for the recovery thereof, that the charge of desertion was false or ill-founded, such person shall not only be entitled to double the wages due to him, of which the amount deposited in the hands of the treasurer of *Greenwich* Hospital shall form a part, but also treble costs, and which shall be paid to such person or his lawful attorney, by the owner, master, or other person, upon whose notice or at whose instance the payment thereof shall have been withheld from him, within seven days after the fact of his not having deserted shall have been so established; to be certified by the said magistrates, or the court in which the decision shall have been pronounced.

blished before two Justices within six months after deposit.

Persons unjustly withholding wages to pay double the amount, and treble costs.

XII. Provided, That nothing in this Act contained shall extend or be construed to extend to debar any seaman or mariner, belonging to any merchant ship or vessel, from entering or being entered into the service of His Majesty, his heirs and successors, on board any of his or their ships or vessels; nor shall such seaman or mariner, for such entry, forfeit the wages due to him during the term of his service in such merchant ship or vessel, nor shall such entry be deemed a desertion.

Act not to prevent seamen entering into His Majesty's service, or subject them to the forfeiture of their wages.

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